REPORTS

OF

Cases Argued and Determined

IN THE

COURT of CLAIMS

OF THE

STATE OF ILLINOIS

VOLUME 15

Containing cases in which opinions were filed and orders of dismissal entered without opinion between July 1, 1945 and June 30, 1946.

SPRINGFIELD, ILLINOIS
1946

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PREFACE

The opinions of the Court of Claims herein reported are published by authority of the provisions of Section 18 of an Act entitled "An Act to create the Court of Claims, to prescribe its powers and duties, and to repeal an Act herein named," approved July 17, 1945.

EDWARD J. BARRETT,

Secretary of State and
Ex Officio Clerk of the
court of claims.

JUDGES OF THE COURT OF CLAIMS

GEORGE M. FISHER, *Chief Justice,*
ROBERT P. ECKERT, JR., *Judge,*
WM. WIRT DAMRON, *Judge.*

GEORGE F. BARRETT, *Attorney General*

EDWARD J. BARRETT, *Secretary of State and Ex Officio Clerk of the Court.*
BELLE P. WHITE, *Deputy Clerk.*

RULES OF THE COURT OF CLAIMS OF THE STATE OF ILLINOIS

Adopted pursuant to An Act to create the Court of Claims, to prescribe its powers and duties, and to repeal an Act herein named. (Approved July 17, 1945. L. 1945, p. 660.)

TERMS OF COURT

Rule 1. The Court shall hold a regular session at the Capital of the State on the second Tuesday of January, May and November of each year, and such special sessions at such places as it deems necessary to expedite the business of the Court.

PLEADINGS

Rule 2. Pleadings and practice at common law as modified by the Civil Practice Act of Illinois shall be followed except as is herein otherwise provided.

Rule 3. The original and five copies of all pleadings shall be filed with the Clerk and the original shall be provided with a suitable cover, bearing the title of the Court and cause, together with a proper designation of the pleading printed or plainly written thereon.

Rule 4. (a) Cases shall be commenced by a verified complaint which shall be filed with the Clerk of the Court. A party filing a case shall be designated as the claimant and the State of Illinois shall be designated as the respondent. The Clerk will note on the complaint and each copy the date of filing and deliver one of said copies to the Attorney General.

(b) Only a licensed attorney and an attorney of record in said case will be permitted to appear for or on behalf of any claimant, but a claimant, although not a licensed attorney, may prosecute his own claim in person. All appearances, including substitution of attorneys, shall be in writing and filed in the case.

(c) The complaint shall be printed or typewritten and shall be captioned substantially as follows:

IN THE COURT OF CLAIMS OF THE STATE OF ILLINOIS

A. B., Claimant
vs. No.
STATE OF ILLINOIS, Respondent

Rule 5. (a) The claimant shall! state whether or not his claim has been presented to any State department or officer thereof, or to any person, corporation or tribunal, and if so presented, he shall state when, to whom, and what action mas taken thereon.

(b) The claimant shall in all cases set forth fully in his petition the claim, the action thereon, if any, on behalf of the State, what persons are owners thereof or interested therein, when and upon what consideration such persons became so interested; that no assignment or transfer of the claim or any part thereof or interest therein has been made, except as stated in the petition; that the claimant is justly entitled to the amount therein claimed from the State of Illinois, after allowing all just credits; and that claimant believes the facts stated in the petition to be true.

(c) If the claimant bases his complaint upon a contract or other instrument in writing a copy thereof shall be attached thereto for reference.

Rule 6. (a) A bill of particulars, stating in detail each item and the amount claimed on account thereof, shall be attached to the complaint in all cases.

(b) Where the claim arises under the Workmen's Compensation Act or the Occupational Diseases Act, the claimant shall set forth in the complaint all payments, both of compensation and salary, which have been received by him or by others on his behalf since the date of the injury; and he shall also set forth in separate items the amount incurred, and the amount paid for medical, surgical and hospital attention on account of his injury, and the portion thereof, if any, which was furnished or paid for by the respondent.

Rule 7. If the claimant be an executor, administrator, guardian or other representative appointed by a judicial tribunal, a duly authenticated copy of the record of appointment must be filed with the complaint.

Rule 8. If the claimant die pending the suit the death may be suggested on the record, and the legal representative on filing a duly authenticated copy of the record of appointment as executor or administrator, may be admitted to prosecute the suit by special leave of the Court. It is the duty of the claimant's attorney to

suggest the death of the claimant when that fact first becomes known to him.

Rule 9. Where any claim has been referred to the Court by the Governor or either House of the General Assembly, any party interested therein may file a verified complaint at any time prior to the next regular session of the Court. If no such person files a complaint, as aforesaid, the Court may determine the case upon whatever evidence it shall have before it, and if no evidence has been presented in support of such claim, the case may be stricken from the docket with or without leave to reinstate, in the discretion of the Court.

Rule 10. A claimant desiring to amend his complaint, or to introduce new parties may do so at any time before he has closed his testimony, without special leave, by filing five copies of an amended complaint, but any such amendment or the right to introduce new parties shall be subject to the objection of the respondent, made before or at final hearing. Any amendments made subsequent to the time the claimant has closed his testimony must be by leave of Court.

Rule 11. The respondent shall answer within thirty days after the filing of the complaint, and the claimant shall reply within fifteen days after the filing of said answer, unless the time for pleading be extended; provided, that if the respondent shall fail so to answer, a general traverse or denial of the facts set forth in the complaint shall be considered as filed.

EVIDENCE

Rule 12. At the next succeeding term of court after a case is at issue, the Court, upon call of the docket, shall set the same for hearing.

Rule **13.** All Evidence shall be taken in writing in the manner in which depositions in chancery are usually taken. All evidence when taken and completed by either party shall be filed with the Clerk on or before the first day of the next succeeding regular session of the Court.

Rule **14.** All costs and expenses of taking evidence on behalf of the claimant shall be borne by the elaimant, and the costs and expenses of taking evidence on behalf of the respondent shall be borne by the respondent, except in cases arising under the Workmen's Compensation and Occupational Diseases Acts.

Rule **15.** If either party fails to file the evidence as herein required, the Court may, in its discertion, proceed with its determination of the case.

Rule **16.** All records and files maintained in the regular course of business by any State department, commission, board or agency of the respondent and all departmental reports made by any officer

thereof relating to any matter or case pending before the Court shall be prima facie evidence of the facts set forth therein; provided, a copy thereof shall have been first duly mailed or delivered by the Attorney General to the claimant or his attorney of record.

ABSTRACTS AND BRIEFS

Rule 17. The claimant in all cases where the transcript of evidence exceeds twenty-five pages in number shall furnish a complete typewritten or printed abstract of the evidence, referring to the pages of the transcript by numerals on the margin of the abstract. The evidence should be condensed in narrative form in the abstract so as to present clearly and concisely its substance. The abstract must be sufficient to present fully all material facts contained in the transcript and it will be taken to be accurate and sufficient for a full understanding of such facts, unless the respondent shall file a further abstract, making necessary corrections or additions.

Rule 18. When the transcript of evidence does not exceed twenty-five pages in number the claimant may file the original and five copies of such transcript in lieu of typewritten or printed abstracts of the evidence, otherwise the original and five copies of an abstract of the evidence shall be filed with the Clerk. The original shall be provided with a suitable cover, bearing the title of the Court and case, together with the name and address of the attorney filing the same printed or plainly written thereon.

Rule 19. Each party may file with the Clerk the original and five copies of a typewritten or printed brief setting forth the points of law upon which reliance is had, with reference made to the authorities sustaining their contentions. Accompanying such briefs there may be a statement of the facts and an argument in support of such briefs. The original shall be provided with a suitable cover, bearing the title of the Court and case, together with the name and address of the attorney filing the same printed or plainly written thereon. Either party may waive the filing of his brief and argument by filing with the Clerk a written notice and five copies to that effect.

Rule 20. The abstract, brief and argument of the claimant must be filed with the Clerk on or before thirty days after all evidence has been completed and filed with the Clerk, unless the time for filing the same is extended by the Court or one of the Judges thereof. The respondent shall file its brief and argument not later than thirty days after the filing of the brief and argument of the claimant, unless the time for filing the brief of claimant has been extended, in which case the respondent shall have a similar extension of time within which to file its brief. Upon good cause shown further time to file abstract, brief and argument or a reply

brief of either party may be granted by the Court or by any Judge thereof.

Rule **21.** If either party shall fail to file either abstracts or briefs within the time prescribed by the rules, the Court may proceed with its determination of the case.

EXTENSION OF TIME

Rule **22.** Either party, upon notice to the other party, may make application to this Court, or any Judge thereof, for an extension of .time for the filing of pleadings, abstracts or briefs.

MOTIONS

Rule **23.** Each party shall file with the Clerk the original and five 'copies of all motions presented. The original shall be provided with a suitable cover, bearing the title of the Court and case, together with the name and address of the attorney filing the same printed or plainly written thereon.

Rule **24.** In case a motion to dismiss is denied, the respondent shall plead within thirty days thereafter, and if **a** motion to dismiss be sustained, the claimant shall have thirty days thereafter within which to file petition for leave to amend his complaint.

ORAL ARGUMENTS

Rule **25.** Either party desiring to make oral argument shall file a notice of his intention to do so with the Clerk at least ten days before the session of the Court at which he wishes to make such argument.

REHEARINGS

Rule **26.** **A** party desiring a rehearing in any case shall, within thirty days after the filing of the opinion, file with the clerk the original and five copies of his petition for rehearing. The petition shall state briefly the points supposed to have been overlooked or misapprehended by the Court, with proper reference to the particular portion of the original brief relied uon, and with authorities and suggestions concisely stated in support of the points. Any petition violating this rule will be stricken.

Rule **27.** When a rehearing is granted, the original briefs of the parties and the petition for rehearing, answer and reply thereto shall stand as files in the case on rehearing. The opposite party shall have twenty days from the granting of the rehearing to answer the petition, and the petitioner shall have ten days thereafter within which to file his reply. Neither the claimant nor the respondent shall be permitted to file more than one application or petition for a rehearing.

Rule **28.** When a decision is rendered against a claimant, the Court, within thirty days thereafter, may grant a new trial for any reason which, by the rules of common law or chancery in suits between individuals, would furnish sufficient ground for granting a new trial.

RECORDS AND CALENDAR

Rule **29.** (a) The Clerk shall record all orders of the Court, including the final disposition of cases. He shall keep a docket in which he shall enter all claims filed, together with their number, date of filing, the name of claimants, their attorneys of record and respective addresses. As papers are received by the Clerk, in course, he shall stamp the filing date thereon and forthwith mail to opposing counsel a copy of all orders entered, pleadings, motions, notices and briefs as filed; such mailing shall constitute due notice and service thereof.

(b) Within ten days prior to the first day of each session of the Court, the Clerk shall prepare a calendar of the cases set for hearing, and of the cases to be disposed of at such session, and deliver **a** copy thereof to each of the Judges and to the Attorney General.

Rule 30. Whenever on peremptory call of the docket any case appears in which no positive action has been taken, and no attempt made in good faith to obtain a decision or hearing of the same, the Court may, on its own motion, enter an order therein ruling the claimant to show cause on or before the first day of the next succeeding regular session why such case should not be dismissed for want of prosecution and stricken from the docket. Upon the claimant's failure to take some affirmative action to discharge or comply with said rule, prior to the first day of the next regular session after the entry of such order, such case may be dismissed and stricken from the docket with or without leave to reinstate on good cause shown. On application and a proper showing made by the claimant the Court may, in its discretion, grant an extension of time under such rule to show cause. The fact that any case has been continued or leave given to amend, or that any motion or matter has not been ruled upon will not alone be sufficient to defeat the operation of this rule. The Court may, during the second day of any regular session, call its docket for the purpose of disposing of cases under this rule.

FEES AND COSTS

Rule 31. The following schedule of fees shall apply:

Filing of complaint (except cases under the Workmen's Compensation Act and the Occupational Diseases Act) $10.00

Certified copies of opinions :

Five pages or less.	$ 0.25
For more than five pages and not more than ten pages	0.35
For more than ten pages and not more than twenty pages	0.45
For more than twenty pages..	0.50

Rule 32. Every claim cognizable by the Court and not otherwise sooner barred by law,* shall be forever barred from prosecution therein unless it is filed with the Clerk of the Court within two years after it first accrues, saving to infants, idiots, lunatics, insane persons and persons under other disability at the time the claim accrues two years from the time the disability ceases.

ORDER OF THE COURT

The above and foregoing rules were adopted as the rules of the Court of Claims of the State of Illinois on the 11th day of September, A. D. 1945, to be in full force and effect from and after the first day of November, A. D. 1945.

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* See limitation provisions of specific statutes, including Workmen's Compensation and Occupational Diseases Acts.

COURT OF CLAIMS LAW

AN ACT *to create the* **Court** *of* **Claims,** *to prescribe its powers and duties, and to repeal an Act herein named. (Approved July* **17,** *1945.)*

***Be** it enacted by the People of the State of* **Illinois,** *represented in the General Assembly:*

SECTION 1. The Court of Claims, hereinafter called the court is created. It shall consist of three judges, to be appointed by the Governor by and with the advice and consent of the Senate, one of whom shall be appointed chief justice. In case of vacancy in such office during the recess of the Senate, the Governor shall make a temporary appointment until the next meeting of the Senate, when he shall nominate some person to fill such office. If the Senate is not in session at the time this Act takes effect, the Governor shall make temporary appointments as in case of vacancy.

§ 2. The term of office of each judge first appointed pursuant to this Act shall commence July 1, 1945 and shall continue until the third Monday in January, 1949, and until a successor is appointed and qualified. After the expiration of the terms of the judges first appointed pursuant to this Act, their respective successors shall hold office for a term of four years from the third Monday in January of the year 1949 and each fourth year thereafter and until their respective successors are appointed and qualified.

§ 3. Before entering upon the duties of his office, each judge shall take and subscribe the constitutional oath of office and shall file it with the Secretary of State.

§ 4. Each judge shall receive a salary of $4,000.00 dollars per annum payable in equal monthly installments.

§ 5. The court shall have a seal with such device as it may order.

§ 6. The court shall hold a regular session at the Capital of the State beginning on the second Tuesday of January, May and November, and such special sessions at such places as it deems necessary to expedite the business of the court.

§ 7. The court shall record its acts and proceedings. The Secretary of State, ex-officio, shall be clerk of the court, but may appoint a deputy, who shall be a officer of the court, to act in his stead. The deputy shall take an oath to discharge his duties faith-

fully and shall be subject to the direction of the court in the performance thereof.

The Secretary of State shall provide the court with a suitable court room, chambers and such office space as is necessary and proper for the transaction **of** its business.

§ 8. The Court shall have jurisdiction to hear and determine the following matters :

A. All claims against the state founded upon any law of the State of Illinois, or upon any regulation thereunder by an executive or administrative officer or agency..

B. All claims against the state founded upon any contract entered into with the State of Illinois.

C. All claims against the State for damages in cases sounding in tort, in respect of which claims the claimants, would be entitled to redress against the State of Illinois, at law or in chancery, if the State were suable, and all claims sounding in tort against The Board of Trustees of the University **of** Illinois; provided, that an award for damages in a case sounding in tort shall not exceed the sum **of** $2,500.00 to or for the benefit of any claimant. The defense that the State or The Board of Trustees of the University of Illinois is not liable for the negligence of its officers, agents, and employees in the course of their employment shall not be applicable to the hearing and determination of such claims.

D. All claims against the State for personal injuries or death arising out of and in the course of the employment of any State employee and all claims against The Board of Trustees of the University of Illinois for personal injuries or death suffered in the course of, and arising out of the employment by the Board **of** Trustees **of** the University of Illinois **of** any employee of the University, the determination of which shall be in accordance with the substantive provisions of the Workmen's Compensation Act or the Workmen's Occupational Diseases Act, as the case may be.

E. All claims for recoupment made by the State of Illinois against any claimant.

§ 9. The Court may:

A. Establish rules for its government and for the regulation of practice therein; appoint commissioners to assist the court in such manner as it directs and discharge them at will; and exercise such powers as are necessary to carry into effect the powers herein granted.

B. Issue subpoenas to require the attendance of witnesses for the purpose of testifying before it, or before any judge of the Court, or before any notary public, or any of its commissioners, and to require the production of any books, records, papers or documents that may be material or relevant as evidence in any matter pending before it. In case any person

refuses to comply with any subpoena issued in the name of the chief justice, or one of the judges, attested by the clerk, with the seal of the court attached, and served upon the person named therein as a summons at common law is served, the circuit court of the proper county, on application of the clerk of the court, shall compel obediece by attachment proceedings, as for contempt, as in a case of a disobedience of the requirements of a subpoena from such court on a refusal to testify therein.

§ 10. The judges, commissioners and the clerk of the court may administer oaths and affirmations, take acknowledgments of instruments in writing, and give certificates of them.

§ 11. The claimant shall in all cases set forth fully in his petition the claim, the action thereon, if any, on behalf of the State, what persons are owners thereof or interested therein, when and upon what consideration such persons became so interested; that no assignment or transfer of the claim or any part thereof or interest therein has been made, except as stated in the petition; that the claimant is justly entitled to the amount therein claimed from the State of Illinois, after allowing all just credits; and that claimant believes the facts stated in the petition to be true. The petition shall be verified, as to statements of facts, by the affidavit of the claimant, his agent, or attorney.

§ 12. The court may direct any claimant to appear, upon reasonable notice, before it or one of its judges or commissioners or before a notary and be examined on oath or affirmation concerning any matter pertaining to his claim. The examination shall be reduced to writing and be filed with the clerk of the court and remain as a part of the evidence in the case. If any claimant, after being so directed and notified, fails to appear or refuses to testify or answer fully as to any material matter within his knowledge, the court may order that the case be not heard or determined until he has complied fully with the direction of the court.

§ 13. Any judge or commissioner of the court may sit at any place within the State to take evidence in any case in the court.

§ 14. Whenever any fraud against the State of Illinois is practiced or attempted by any claimant in the proof, statement, establishment, or allowance of any claim or of any part of any claim, the claim or part thereof shall be forever barred from prosecution in the court.

§ 15. When a decision is rendered against a claimant, the court may grant a new trial for any reason which, by the rules of common law or chancery in suits between individuals, would furnish sufficient ground for granting a new trial.

§ 16. Concurrence of two judges is necessary to the decision of any case.

§ 17. Any final determination against the claimant on any claim prosecuted as provided in this Act shall forever bar any further claim in the court arising out of the rejected claim.

§ 18. The court shall file with its clerk a written opinion in each case upon final disposition thereof. All opinions shall be compiled and published annually by the clerk of the court.

§ 19. The Attorney General, or his assistants under his direction, shall appear for the defense and protection of the interests of the State of Illinois in all cases filed in the court, and may make claim for recoupment by the State.

§ 20. At every regular session of the General Assembly, the clerk of the court shall transmit to the General Assembly a complete statement of all decisions in favor of claimants rendered by the court during the preceding two years, stating the amounts thereof, the persons in whose favor they were rendered, and a synopsis of the nature of the claims upon which they were based. At the end of every term of court, the clerk shall transmit a copy of its decisions to the Governor, to the Attorney General, to the head of the office in which the claim arose, to the State Treasurer, to the Auditor of Public Accounts, and to such other officers as the court directs.

§ 21. The Court is authorized to impose, by uniform rules, a fee of $10.00 for the filing of a petition in any case; and to charge and collect for each certified copy of its opinions a fee of twenty-five cents for five pages or less, thirty-five cents for more than five pages and not more than ten pages, forty-five cents for more than ten pages and not more than twenty pages, and fifty cents for more than twenty pages. All fees and charges so collected shall be forthwith paid into the State Treasury.

§ 22. Every claim cognizable by the court and not otherwise sooner barred by law shall be forever barred from prosecution therein unless it is filed with the clerk of the court within two years after it first accrues, saving to infants, idiots, lunatics, insane persons and persons under other disability at the time the claim accrues two years from the time the disability ceases.

§ 23. It is the policy of the General Assembly to make no appropriation to pay any claim against the Senate, cognizable by the court, unless an award therefor has been made by the court.

§ 24. "An Act to create the Court of Claims and to prescribe its powers and duties," approved June 25, 1917, as amended, is repealed. All claims pending in the Court of Claims created by the above Act shall be heard and determined by the court created by this Act in accordance with this Act. All of the records and property of the Court of Claims created by the Act herein repealed shall be turned over as soon as possible to the court created by this Act.

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CASES ARGUED AND DETERMINED IN THE COURT OF CLAIMS OF THE STATE OF ILLINOIS

(No. 3686—Claim denied.)

CHARLES R. DENGES, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion. filed March 15, 1944.

Petition of claimant for rehearing allowed May 9, 1944. Supplemental **opinion** *filed November 13, 9945.*

EMERSON C. WHITNEY and J. D. TEITELBAUM, for claimant.

GEORGE F. BARRETT, Attorney General; WILLIAM L. MORGAN, ASSISTANT Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*making claim for compensation* and *filing application therefor within time fixed by Section 24 of the Act is a condition precedent to jurisdiction of the Court.* Where the record discloses that no application for compensation for the injury was filed by employee within the period required by Section 24 of the Workmen's Compensation Act, the court is without jurisdiction and cannot entertain the claim.

DAMRON, C. J.

This complaint was filed on the 19th day of February, 1942 by claimant seeking an award under the provisions of the Workmen's Compensation Act.

It alleges that claimant was employed by the respondent in the Division of Highways in the capacity of laborer. That on the 23rd day of July, 1941 in the course of his employment for the respondent in repairing the road surface of Grand Avenue, a public road approximately one mile west of Wolf Road, **Cook** County, the crow bar which claimant was using slipped and the upper

portion of the handle hit the claimant a hard blow on the right nipple of the right part of his chest.

It further alleges that on the date of the accident he notified his employer by reporting the injury at once to William E. Johnson, his foreman, and subsequently on November 11, 1941 he made a written report of his accident and the injury to the State of Illinois by mailing a notice thereof to the Division of Highways.

It alleges that claimant has been unable to work since the 26th day of November, 1941 and has suffered severe and permanent damage and disability as a result of his said injury. That as a direct result of said injury he has incurred medical, surgical and hospital expenses in the sum of $138.00, none of which have been paid by claimant or respondent.

It avers he is suffering with cancer of the breast and that it is necessary: for him to take x-ray treatments of the malignant tissue approximately three days in each week and asks an award for permanent and complete disability in accordance with the Workmen's Compensation Act.

The respondent files a motion to dismiss the complaint setting up two reasons therefor:

(1) No claim for compensation was made within six months after the date of the accident as required by the terms and provisions of Section 24 of the Workmen's Compensation Act.

(2) The claimant's complaint does not show a demand for compensation within six months after the accident.

The record consists of the complaint, original transcript of evidence, abstract of evidence, claimant's statement, brief and argument, report of the Division of Highways, motion of respondent to dismiss, statement,

brief and argument in support of said motion and suggestions of claimant in reply to respondent's motion to dismiss.

The report of the Division of Highways is prima facie evidence under rule 21, if a copy thereof shall have been first duly mailed or delivered by the Attorney General to the claimant or his attorney of record.

This report, a copy of which was delivered to the attorney of record for claimant on the day of the hearing, July 28, 1942, in the office of the Attorney General, 208 South LaSalle Street, Chicago, states that "on or about November 3, 1941, Kendrick Harger, district engineer, Chicago, received a bill from Oak Park hospital, dated October 30, 1941, covering services rendered the claimant. This bill was in the amount of $47.15 and indicated that the claimant had been confined in the hospital from October 24 to 26, 1941 inclusive, and that he had been served in the operating room and had been administered an anesthetic. This was the first notice that the Division had concerning an injury to the claimant."

The evidence of the claimant shows that on the date of said injury he notified his foreman, one William E. Johnson, that he had been struck a blow on the chest that day, but he did not ask for hospitalization or medication. He testified he did not think it was serious. Johnson was not called as a witness.

Referring again to the departmental report, it contains a report of Dr. Louis River, of Oak Park, who operated on claimant. On November 18 at the request of the Division of Highways he supplied it with the following report in reference to his treatment and examination of said claimant:

"Patient's story of accident—claims he struck region of right nipple with crow bar which slipped while working. Patient came on his own responsibility. No evidence of injury noticed when I first examined

him, October 21, 1941. There was a 3 cm. in diameter free hard nodule above and medial to the right nipple. Presumptive diagnosis was carcinoma of the breast. Treatment—simple right mastectomy, October 25, 1941. Uneventful recovery, primary union of the wound. Section shows grade 3 adenocarcinoma. At present receiving deep x-ray therapy from Dr. Jenkinson at the Ravenswood Hospital. Ability to return to work—November 3, 1941. Patient was discharged October 31, 1941. I have no reason to believe this lesion to be the result of occupational trauma."

This report as well as the evidence of the claimant shows that claimant was paid full wages from the date of the alleged injury to the 19th day of November, 1941 when he ceased to be an employee of the Division. These wages amounted to the sum of $280.20. William E. Johnson, the foreman of the gang in which the claimant was employed on the date of the alleged injury, turned in the time for this claimant, which enabled claimant to receive full wages and failed to make any report to the Division of any claim for injury on July 23, 1941, or subsequent thereto.

The report further states "no officer of the Division or of the State of Illinois received a demand from the claimant or his personal representative for compensation until the filing of the complaint in this case."

Section 24 of the Workmen's Compensation Act is jurisdictional. It provides "no proceedings for compensation under this Act shall be maintained unless notice of the accident has been given to the employer as soon as practicable, but not later than thirty days after the accident * * *. Notice of the accident shall give the approximate date and place of the accident, if known, and may be given orally or in writing; provided, no proceeding for compensation under this Act shall be maintained unless claim for compensation has been made within six months after the accident, provided, that in any case, unless application for compensation is filed with the

Industrial Commission (Court of Claims) within one year after the date of the accident, where no compensation has been paid, or within one year after the date of the last payment of compensation, where any has been paid, the right to file such application shall be barred."

It has been repeatedly held by this court that the giving of notice within thirty days and the making of claim for compensation and filing application therefor within the times fixed by Section 24 of the Workmen's Compensation, Act is a condition precedent, without which, the Court of Claims is without jurisdiction to proceed with the hearings. *Crabtree* vs. *State,* 7 C. C. R. 207.

Under the record we must consider the filing of the complaint the first demand made by claimant for compensation. This complaint was filed on February 19, 1942, more than six months subsequent to the date of the alleged injury.

The provisions of Section 24 of the Compensation Act not having been complied with, the motion of the Attorney General to dismiss is therefore sustained for lack of jurisdiction to hear said complaint.

Case dismissed.

(No. 3686—Claimant awarded $4,224.00.)

EDITH DENGES, WIDOW OF CHARLES R. DENGES, Claimant, vs. **STATE OF ILLINOIS,** Respondent.

Supplemental opinion filed November 13, 1945.

WORKMEN'S COMPENSATION ACT—*when a dependent* **widow of a claimant** *who died as a result of accidental injuries which arose* **out of** *and in the* **course of his** *employment is entitled to an award.* **Where a claimant suffered an injury to his chest** in **the course of his employment which developed into cancer and resulted** in **his death, and claim for compensation was made within the time prescribed by Section 24 of said Act, an award may be made to his dependent widow as provided in Section 7, par. (A-K) of the Workmen's Compensation Act.**

DAMRON, J.

On February 19, 1942, claimant, Charles R. Denges, filed his complaint, in this court, seeking an award under the provisions of the Workmen's Compensation Act.

The Attorney General filed a motion to dimiss the complaint, for the reason that the complaint failed to show a demand for compensation was made on respondent within six months after the accident, as required under Section 24 of the Compensation Act.

At the March term, 1944, of this court, we delivered an opinion sustaining the motion of the Attorney General, and complaint was dismissed for lack of jurisdiction.

On April 12, **1944,** the claimant filed a motion for rehearing in said cause, and **on** May **9,1944,** re-hearing was granted.

On the 26th day **of** December, 1944, the Department of Public Works and Buildings (Division of Highways), filed an additional report, in this court, which shows that claimant did comply with the provisions of Section **24** of the Act, in that he had reported to one William E. Johnson, his foreman, on the day he was injured, and under Rule 21 of this court, this report is accepted as prima facie evidence.

On February 28, 1945, the Trust Company of Chicago, as administrator, filed a suggestion of death, showing that claimant, Charles Denges, had departed this life on the 7th day of May, 1944, and on the 20th day of March, 1945, the said administrator filed a motion to be substituted as claimant in the above entitled proceedings.

On October 26th, 1945, an amended and supplemental claim was filed by Edith Denges, as widow of Charles R. Denges, deceased, which is now under consideration by this court. Said amended complaint sets up all the mate-

rial allegations of the complaint, heretofore filed by Charles R. Denges, deceased, and, in addition thereto, shows that the said Charles R. Denges died'on May 7, 1944, of carcinoma of the breast and pleural carcinoma metastases, which directly and proximately resulted from the injury received by him in the course of his employment for the respondent on the 23rd day of July, 1941.

This complaint further shows, and the allegations are corroborated by the report of the Division of Highways, as aforesaid, that claimant left surviving him his widow, Edith Denges, now the claimant, as the sole and only dependent.

All of the facts having heretofore been set out in our former opinion, we will not resort to a repetition, but briefly state that Charles R. Denges was in the employ of the respondent, in the Division of Highways, in the capacity of a laborer, receiving a wage of 60c per hour, for an eight hour day, being employed each week five and one-half days.

On the 23rd day of July, 1941, while in the act of prying loose a broken piece of concrete on the road surface of Grand Avenue, a state highway approximately one mile west of Wolf Road, in Cook County, Illinois, the crow bar slipped, and the upper portion of the handle hit the claimant a hard blow on the right nipple of his chest; he was treated for said injury at the Oak Park Hospital, Oak Park, Illinois, by Dr. Louis River, but continued work until the 19th day of October, 1941, receiving his full wages during that time. On that day he ceased to be an employee of the Division.

The evidence discloses that cancer of the breast developed from this injury; that he received numerous x-ray treatments in order to relieve himself of this con-

dition, which failed to so relieve him. Claimant died, as a result of his injuries, on May 7, 1944, as aforesaid.

After a full consideration of this record, the court makes the following findings :

That claimant and respondent were, on the 23rd day of July, 1941, operating under the provisions of the Workmen's Compensation Act; that on the date last above mentioned, said claimant sustained accidental injuries which arose out of and in the course of his employment, from which he died; that notice of said accident was given said respondent and claim for compensation on account thereof was made on said respondent, within the time required by the provisions of Section 24 of said Act; that the earnings of said claimant, at the time of his injury, were 60c per hour for an eight hour day, five and one-half days per week.

The evidence discloses that employees of the respondent, doing similar work of claimant's intestate, worked for respondent less than 200 days per year.

His weekly wage, therefore, would be $18.46, making his compensation rate amount to the sum of $10.15, as provided in Section 8, paragraph (L) of the Workmen's Compensation Act (Rev. Stat. 1941).

An award is, therefore, hereby entered in favor of the claimant, Edith Denges, as the dependent widow of Charles R. Denges, deceased, in the sum of $4224.00, as provided in Section 7, par. (A-R) of the Workmen's Compensation Act, as amended.

There has now accrued up to November 13, 1945 the sum of $2153.25, being 212 1/7 weeks, at $10.15, which is payable in a lump sum forthwith; the remainder, $2,070.75, to be paid to her weekly, at the rate of $10.15, with a balance of $0.15.

Such future payments being subject to the terms of

the Workmen's Compensation Act of Illinois, jurisdiction of this cause is hereby retained for the purpose of making such further orders as may from time to time be necessary herein.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees," and is payable, upon approval, from the appropriation from the Road Fund in the manner provided in such act.

This record discloses that claimant incurred medical and hospital bills, including x-ray treatments, which were not authorized by the respondent. Claim for these medical expenses, therefore, cannot be allowed.

(No. 3686—Petition for lump sum settlement—denied.)

EDITH DENGES, WIDOW OF CHARLES R. DENGES, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 19, 1946.

EMERSON C. WHITNEY and J. D. TEITELBAUM, for claimant.

GEORGE F. BARRETT, Attorney General; WILLIAM L. MORGAN, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*when petition for lump sum payment will be denied.* Where deceased employee leaves him surviving only his widow and no child or children whom he was under legal obligation to support at the time of his injury, it would not be for the best interests of employer to allow a lump sum settlement. The widow's right to receive compensation would be extinguished by her death or remarriage. The award is uncertain and contingent in its duration and amount. Illinois *Zinc Company* vs. *Industrial Commission*, 366 Illinois 480.

DAMRON, J.

This cause again comes before the Court pursuant to a petition for a lump sum settlement in accordance with

the provisions of Section Nine (9) of the Workmen's Compensation Act.

On November 13, 1945, this Court entered an award in favor of the claimant, Edith Denges, as widow of Charles R. Denges, for $4224.00 as provided in Section 7a of the Act, as amended. At the time of the rendition of the award, there was then due the claimant the sum of $2153.25 which was paid to the claimant by the respondent in a lump sum.

The above named petitioner was the only dependent left surviving the said deceased employee, there was no child or children left surviving whom he was under legal obligation to support at the time of his injury which resulted in his death.

At the time of the! filing of this petition for a lump sum, there was yet due claimant, under the provisions of said award, the sum of $1979.40 to be paid to her at the rate of $10.15 per week. This petitioner states in her petition that she now has an opportunity to go into the retail clothing business in which she is experienced and in which she believes that she can make a satisfactory livelihood. She says she has no other source of income and is, at the present time, unemployed.

The question as to whether the provisions of the Workmen's Compensation Act, relative to lump sum payments, apply to cases in which the facts are similar to the facts in the present case, was considered in *Illinois Zinc Company* vs. *Industrial Commission,* **366** Illinois 480. In that case, as in this, the deceased employee left him surviving his widow and no child or children whom he was under legal obligation to snpport at the time of his injury. It was pointed out in that opinion that under the provisions of Section 7a and Section 21 of the Workmen's Compensation Act, the right to receive compen-

sation would be extinguished by the remarriage or death of the widow; that althogh it might be for the best interest of the widow, it clearly could not be for the best interests of the employer to allow a lump sum. The Court further said:

"It is our opinion that Section 9 is not applicable to an award such as this, which is uncertain and contingent in its duration and amount. To hold otherwise would be to deprive the employer of due process of law and the equal protection of the law and would render the entire section unconstitutional. A commutation of the last 102 weeks of compensation in this case would be as absurd from a legal standpoint, as if the Governor should attempt to commute the last one-half or one-third of a life sentence."

Under the law, as laid down by our Supreme Court in the *Illinois Zinc Company* **vs.** *Industrial Commission, supra,* we have no authority to order a lump sum payment under the facts in this case, and claimant's petition therefore must be denied.

(No. 3737—Claim denied.)

RUTH CASSITY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 14, 1945.

Petition of claimant for rehearing denied May 8, 1945.
Motion of claimant to set aside denial of petition for rehearing denied November 13, 1945.

FRANK R. EAGLETON, **for claimant.**

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*when claim will be denied.* **Where there *is* no competent proof of the nature of claimant's injury—the cause** or **duration thereof—and** no **objective condition** or **symptom appears and the claim is based entirely upon the subjective complaint**

of the claimant—an award will be denied. To make an award based upon such a set of facts would require considerable speculation or conjecture. This would be contrary to the rulings of this court and the Supreme Court of Illinois.

FISHER, J.

This claim was filed on August 3, 1942. Claimant alleges that on or about the 4th day of August 1941 she was employed as an attendant at the Manteno State Hospital; that on the 4th day of August, 1941, while in the course of her employment and the performance of her duties, she was kicked in the stomach by an insane patient, and, as a result of said kick, is now totally disabled.

The record consists of the Complaint, Departmental Report, Rule to Show Cause, Claimant's Motion for an Extension, Stipulation with Claimant's Exhibits A, B, C and D, Transcript of Claimant's Evidence, Claimant's Statement, Brief and Argument, Respondent's Statement, Brief and Argument, and Reply Brief of Claimant.

Claimant testified that she was injured on the 4th day of August, 1941, and that she remained at the State Hospital at Manteno for one month "or a day or two over"; that she then took sick leave and went to Danville, Illinois. She further testified that about the second or third day after she arrived at Danville, Illinois, she was taken to the Lake View Hospital, and called Dr. Dickerson. Dr. Dickerson reports that he was first called on September 22, 1941 to treat Mrs. Cassity at the Lake View Hospital in Danville, Illinois. The report of the Manteno State Hospital, filed herein, states that she failed to report for duty and was reported "as a quit-short resignation," and further that she was discharged from the hospital on August 19, 1941. She was paid her full salary for the month of August 1941. The report of the Manteno State Hospital further shows that on August 2, 1941, while working in the hospital, claimant was

kicked in tha center of the chest by a disturbed patient. She was immediately seen by the hospital physician, who, after examining her, stated there were no visible signs of injury. She was not hospitalized, and resumed her usual duties. Later, on August **18, 1941,** she entered the hospital complaining of nausea and vomiting. She volunteered that she had had similar attacks of this nature, the previous one being about six weeks before, and she stated at that time the cause of her then illness was the witnessing of a colored patient in an epileptic seizure. The report further shows "the physical examination at this time revealed that she had extensive gynecological and gastric surgery." The same report, signed by Edward Ross, M. D., Managing Officer, Manteno State Hospital, concluded "It is our candid opinion that no deleterious effects resulted from her, injury on August 2, **1941.** Our records do not indicate that any demands on this hospital have been made for further compensation or medical attention."

Exhibit B, attached to the Stipulation herein, is a letter from D. L. Dickerson, M. D. of Danville, Illinois, who stated that on September 22, **1941** he was called to the Lake View Hospital at Danville to attend Mrs. Cassity. He found her in distress and said "the injury which the patient believed responsible for her distress was trauma high in her epigastrium that resulted in periodic attacks of pain, similar to but never as severe as the attack at that time. Examination of the abdomen revealed a dome-like contour with moderate distension. The skin was marked by several former surgical incisions. Rebound tenderness was unusually present, especially in the upper abdomen. * * The left foot and ankle were encased in a plaster cast due to an injury not associated with the injury in question." **Dr.** Dickerson

concludes "It is my opinion that the cause of Mrs. Cassity's distress or condition was produced by deep trauma to the abdomen, associated with previous abdominal surgery, which resulted in partial intestinal obstruction. She has been unable to **work** from the time of the injury and will be for some time."

Exhibit D, filed herein, is a letter signed by W. L. Couch, Assistant Superintendent of Charities, **Department**, of Public Welfare, to Frank R. Eagleton, attorney for claimant. This letter is as follows :

"I have a letter from Dr. Major H. Worthington, superintendent of the Research and Educational Hospitals, in which he discusses among other things the facts in the case of Ruth Cassity. I am not enclosing a copy of his letter only because he has written me in a rather personal way. I will quote one paragraph of Dr. Worthington's letter.

"Keep these two points in mind—a kick in the chest or over the sternum means an injury to the bony thorax enclosing the lungs and heart—the epigastrium refers to the soft parts of the lower abdomen over the stomach and intestines." In another section of the letter, Dr. Worthington states—

"If the original injury was a kick in the chest, the symptoms now complained of would have no bearing on the original injury." In view of the fact that the matter was referred to Dr. Worthington in an effort to assist us in getting at the facts, I have, of course, sent a copy of this letter to Mr. Nebel in the Attorney General's Office, as he, too, should have this information."

No other reference to an examinativn by a Dr. Worthington appears in the record of this case, and no medical testimony has been presented.

Claimant's testimony is vague and indefinite. She testifies that a month after the injury she left the hospital at Manteno for Danville, and that the second or third day after she arrived at Danville she became suddenly ill and was taken to the Lake View Hospital at Danville, and Dr. Dickerson was called to treat her ; that he treated her for six months or more; that thereafter Dr. Dickerson became ill and entered a sanitarium. In

answer to a question of whether she had been able to work since the injury she answered, "I have not worked at any time since then." She testified that she had had three or four abdominal operations before the injury complained of.

There is no competent proof of the nature of claimant's injury—the cause or duration thereof. No objective condition or symptom appears. The claim is based entirely upon the subjective complaint of the claimant. The entire record is insufficient to meet the requirements of Section 8(I 3) of the Workmen's Compensation Act.

Also, as pointed out in the brief filed herein by the Attorney General:

> Liability under the Workmen's Compensation Act cannot rest on imagination, speculation, or conjecture, nor on a choice between two views equally compatible with the evidence, but such liability must arise out of the facts established by a preponderance of the evidence.
>
> ***Springfield Dist. Coal Co.* v. *Ind. Corn.*, 303 Ill. 528.**
> ***Libby, McNeill & Libby* v. *Ind. Corn.*, 320 Ill. 293.**
> ***Rittler* v. *Ind. Com.*, 351 Ill. 338.**
> ***Rosenfield* v. *Ind. Com.*, 374 Ill. 176.**
> ***Mandell* v. *State*, 12 C. C. R. 49.**
> ***Pesauanto* v. *State*, 12 C. C. R. 474.**
> ***Alexander* v. *State*, 13 C. C. R. 5.**
> ***Brachenbush* v. *State*, 13 C. C. R. 20.**
> ***Nichols* v. *State*, 13 C. C. R. 80.**
> ***Pearman* v. *State*, 13 C. C. R. 84.**

Respondent, by the Attorney General, contends that to base an award upon such a record as is now before the Court would be at best speculatory. The evidence could very well support the view that the present condition of claimant existed for some time prior to the injury complained of; that the statements of claimant are vague and indefinite in regard to the type and extent of disability which she allegedly suffers, and that to make an award based upon such a set of facts would require considerable speculation or conjecture, which is contrary to the previ-

ous holdings of this Court and the Supreme Court of Illinois.

Claimant in this case is represented by very able counsel, entirely familiar with the requirements under the Workmen's Compensation Act, and it can be safely assumed that had there been evidence to sustain the contentions of claimant, such evidence would have been fully presented.

We must agree with the contention of the Attorney General that to base an award on the record of this case would be merely speculation and conjecture.

For the reasons stated, an award is denied.

(No. 3871—Claimant awarded $1,026.68.)

HERMAN DREZNER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed June 12, 1945.

Petition of claimant for rehearing denied September 11, 1945.

PAUL W. BRUST, for claimant.

GEORGE F. BARRETT, Attorney General; WILLIAM L. MORGAN, Assistant Attorney General, for respondent.

CIVIL SERVICE—*when discharge illegal—award may be made.* Where a civil service employee is illegally discharged and subsequently restored to his position by a court of competent jurisdiction, he is entitled to the salary provided for said position for the period of the illegal discharge where he is ready, able and willing to perform the duties of such position and tendered his services to his employer.

SAME—payment for services limited to actual vacancy. Payment of the salary or compensation of public office or employment to a *de facto* incumbent during the time that he performed its duties prior to the reinstatement of the *de jure* officer or employee is a defense to an action by the *de jure* officer seeking payment of the same salary or compensation.

ECKERT, J.

Claimant, Herman Drezner, was certified on May 1, 1939, by the Illinois Civil Service Commission to the

Illinois Liquor Control Commisson, and was thereupon employed by the Illinois Liquor Control Commission as a special agent. On November 25, 1941, written charges were filed with the Illinois Civil Service Commission alleging that claimant had solicited funds for the Democratic Party during the months of October and November, 1940. A Trial Board, appointed by the Commission, subsequently conducted an investigation of the charges, and claimant was suspended from his position for a period of thirty days from December 17, 1941, to January 16, 1942.

On January 14, 1942, the Illinois Civil Service Commission, approving the findings of its trial board, ordered that claimant be removed from his certified position as of January 31, 1942.

On May 21, 1942, claimant instituted proceedings in the Circuit Court of Cook County to secure his reinstatement and reassignment to duty as a special agent with the Illinois Liquor Control Commission. On January 12,1943, the court entered a judgment order quashing the record of the discharge of claimant, which judgment was not appealed from, and is in full force and effect. Pursuant to this judgment, on January 21, 1943, claimant was reinstated and reassigned to duty as special agent with the Illinois Liquor Control Commission in the classified service of the State of Illinois, and since that time has performed the duties of the position and received the salary attached thereto.

Claimant now alleges that from December 17, 1941, to January 21,1943, he was illegally prevented from performing the duties of his position as special agent, and was illegally deprived of the salary accruing to that position; that during all of said time he was ready, able and willing to perform the dutes of the position, and was ille-

gally prevented from doing so; that the salary of the position of such special agent was **$2400** per year, payable in monthly payments of **$200** each; that for the month of December, **1941,** claimant was paid for seventeen days only in the sum of **$103.22**; that under Section **12** of the State Civil Service Act, his suspension in excess of thirty days was prohibited; that he remained under suspension and was denied the right to perform the duties and receive the salary as such special agent from December **17, 1941,** to January **21, 1943;** and that there is due and owing to him for salary for said period the sum of **$2626.68.**

The claimant also alleges that the Illinois General Assembly, at its regular **1941** session, made an appropriation for the ordinary and contingent expenses of the Illinois Liquor Control Commission, which appropriation included $300,800.00 for salaries and wages of employees of the Commission; that the appropriation was in part as follows: **36** special agents at **$2400.00** each, **$86,400.00** per annum; and that there were sufficient funds on hand when the 'appropriation lapsed to pay claimant the amount of salary alleged to be due him for the period in question.

From the record, it appears that claimant was a duly qualified civil service employee of the State of Illinois; that he was properly suspended for a period of thirty days; that at the expiration of said period of thirty days he was illegally discharged and wrongfully prevented from performing the duties of his position; and that he was subsequently reinstated by order of a court of competent jurisdiction. He has been diligent in the protection of his own rights, and at all times for which he seeks payment of salary, he was ready, willing, and able to perform the duties of his position, tendered the performance thereof, and such tender was refused. A civil service

employee, illegally discharged and subsequently restored to his position by judgment of a court of competent jurisdiction is entitled to the salary provided for said position for the period of the illegal discharge where he is ready, able, and willing to perform the duties of such position and tendered his services to his employer. *Wilson* vs. *State,* **12** C. C. R. **413.**

It also appears from the record, however, that during seven months of the period in question, there were thirty-six special agents employed by the Commission. The appropriation for the biennium was for salaries and wages of thirty-six special agents, at not to exceed an annual rate of **$2400.00** each. Claimant's contention that if thirty-six agents had in fact been employed and paid, the payroll would have exhausted the appropriation for the period in question, can not be sustained. The appropriation was for a salary "not to exceed" the specified rate contained in 'the appropriation bill. The Illinois Liquor Control Commission could not at any time have employed more than the specified thirty-six special agents. During seven months of the period of claimant's absence from his employment, his position was filled by a de facto employee. Payment of the salary or compensation of a public officeor employment to a de facto incumbent during the time that he performed its duties prior to the reinstatement of the de jure officer or employee is a defense to an action by the de jure officer seeking payment of the same salary or compensation. *Laird* vs. *State,* **13** C. C. R. **78.**

The Court, therefore, finds that claimant is not entitled to the payment of salary for the period of thirty days during which he was rightfully suspended, and is not entitled to the payment of salary for the period of seven months during which time his position was filled by

a de facto employee. Claimant, however, is entitled to award for payment of his salary during the remaining period of his illegal discharge in the amount of $1026.68.

Award is therefore entered in favor of the claimant in the sum of $1026.68.

(No. 3881—Claimant awarded $5,552.40 and life pension.)

REVY M. MARTIN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed June 12, 1945.
Petition of claimant for rehearing denied September 11, 1945.

WILSON & SCHMIEDESKAMP, for claimant.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S *COMPENSATION* ACT—*attendant at Illinois Soldiers' and Sailors' Home—within provisions of—when award* may *be made under.* Where it appears that claimant was using a customary or permitted route within a reasonable time before or after work and was struck by an automobile while on the employer's premises, the resulting injuries am in the course of and arose out of his employment, and an award may be made for compensation therefor under the Workmen's Compansation Act upon compliance with the requirements thereof.

ECKERT, J.

Claimant, Revy M. Martin, employed by the Department of Public Welfare of the State of Illinois, as an attendant at the infirmary of the Illinois Soldiers' and Sailors' Home at Quincy, Illinois, was struck by an automobile on the grounds of the Home on February 10,1944. The Illinois Soldiers' and Sailors' Home consists of a group of buildings, including a hospital, infirmary, administration building, and various cottages. The grounds of the institution are enclosed, and a paved road enters the east side of the grounds through a stone gate and curves past various buildings to another gate at the south side of the grounds.

Claimant customarily rode to work on a bus which

enters from the east gate and leaves through the south gate. On the day of the accident, claimant was required to report for work at 7 A. M. At 6:40 A.M. he got off the bus at the, regular stop on the grounds, between the hospital and the infirmary. He then attempted to cross the street when he was struck by a moving automobile and seriously injured. He was immediately taken to the hospital of the Illinois Soldiers' and Sailors' Home, was subsequently moved to Blessing Hospital at Quincy, Illinois, under the care of Dr. James F. Merritt, and later returned to the hospital at the Illinois Soldiers' and Sailors' Home.

As a result of the accident, claimant sustained a fracture of the neck of the right scapula and an impacted fracture of the surgical neck of the left femur and comminuted fractures of both the left tibia and fibula. He also sustained shock, a possible skull fracture, a weakened heart, and thrombophlebitis in both left and right legs. Because of the condition of shock, and the subsequent development of thrombophlebitis; the fractures' were not set. Claimant's hip has failed to heal, and his left leg is shortened approximately an inch and a half. As a result of the fracture of the scapula, his right shoulder is now completely ankylosed. Claimant is still able to walk only with the aid of crutches, and it appears unlikely that he will ever be able to walk unaided, or to use his right shoulder. Claimant is totally and permanently disabled.

At the time of the accident, employer and employee were operating under the provisions of the Workmen's Compensation Act of this State, and notice of the accident and claim for compensation were made within the time provided by the **Act.** At the time of the injury claimant had no children under sixteen years of age.

Claim is made for temporary total disability, for medical expenses in the following amounts: Blessing Hospital, Quincy, Illinois, **$273.40;** Dr. James F. Merritt, Quincy, Illinois, **$128.00;** nursing services **$426.00;** Dr. Harold Swanberg, Quincy, Illinois, $10.00; Illinois Soldiers' and Sailors' Home, $15.00; and for complete and permanent disability, including pension, under paragraph 8(f) of the Workmen's Compensation Act.

An injury received while on the employer's premises by an employee going to or from the scene of his duty is in the course of and arises out of his employment, if the employee is using a customary or permitted route within a reasonable time before or after work. *Schafer* vs. *Industrial Commission,* **343** Ill. **573.** At the time claimant was injured, he had entered the grounds of the institution where he was employed; the injury was sustained approximately fifteen minutes before he was required to report for work; and he was on a paved road regularly used by employees and others entering the grounds. The court finds that the injury was in the course of and arose out of claimant's employment.

The court also finds that claimant is completely disabled, and is therefore entitled to an award under Section 8(f) of the Workmen's Compensation Act. This section provides for payment of compensation equal to 50% of his earnings, but not less than **$7.50,** nor more than $15.00 per week, commencing on the day after the injury, and continuing until the amount paid equals the amount which would have been payable as a death benefit if the employee had died as a result of the injury, and thereafter a pension during life annually. Since payments are to commence on the day after the injury, the Act does not provide for a separate award for temporary total incapacity.

Claimant has incurred medical and hospital expenses for which he is entitled to an award in the total amount of **$852.40,** and he has received from the respondent the sum of **$513.55** which must be deducted from any award entered in his favor. Claimant's annual wage for the year immediately preceding the accident being $1500.00, his average weekly wage was **$28.44, 50%** of which is **$14.42.** Since the injury occurred subsequent to July **1, 1943,** this must be increased 17½%, making a compensation rate of **$16.94.** The amount which would have been payable as a death benefit if the claimant had died as a result of his injury is **$4700.00.**

Award is therefore made in favor of the claimant, Revy M. Martin, in the amount of **$5552.40,** from which must be deducted the sum of **$513.55** previously paid to claimant, leaving a balance of **$5038.85,** to be paid to him as follows :

$426.00, reimbursement for nursing services;

$273.40 for the use of Blessing Hospital, Quincy, Illinois';

$128.00 for the use of Dr. James F. Merritt, Quincy, Illinois;

$10.00 for the use of Dr. Harold Swanberg, Quincy, Illinois; and

$15.00 for the use of the Illinois Soldiers' and Sailors' Home, all of which are payable forthwith.

$664.99 which has accrued, and is payable forthwith.

$3521.46 payable in weekly installments of $16.94 each, beginning June **12, 1945,** for a period of **207** weeks with an additional final payment of **$14.88.**

Claimant is entitled thereafter to an annual pension in the amount of **$376.00,** payable in the amount of **$31.33** per month.

The court specifically reserves jurisdiction for the entry of such further orders as may from time to time be necessary.

(No. 3898—Claimant awarded $4,700.00.)

MAUDE DEANS, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed September 11, 1945.

DAVID N. CONN and WILLIAM G. JUERGENS, for claimant.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*a member of Illinois State Police within provisions of—when an award may be made under—to dependent widow of the deceased employee.* Where it appears that a police officer, while riding a motorcycle in the course of his duties was thrown from his vehicle, and sustained injuries which resulted in his death, his surviving and dependent widow is entitled to an award, Section 7 (a) of the Workmen's Compensation Act—there being no surviving children under sixteen years of age—dependent upon the deceased employee for support at the time of his death.

ECKERT, J.

Claimant, Maude Deans is the widow of Charles J. Deans, deceased, a former police officer of the Illinois State Police. On August 8, 1944, while riding a motorcycle on Illinois Highway No. 14, near the village of Christopher, Franklin County, Illinois, the deceased apparently lost control of his motorcycle which turned abruptly off the pavement, and rolled down an embankment. Deans was thrown from the motorcycle and sustained a fractured skull, from which he died almost immediately. Claimant, as the widow of the deceased officer, seeks an award under the provisions of the Workmen's Compensation Act in the amount of $4,700.

At the time of the accident, which resulted in the

death of Charles J. Deans, the employer and employee were operating under the provisions of the Workmen's Compensation Act of this State, and notice of the accident and claim for compensation were made within the time provided by the Act. The accident arose out of and in the course of decedent's employment.

. Decedent was first employed by the respondent on January 1st, 1944. Persons of the same class, and in the same employment, earned $185.00 per month during the year immediately preceding the death. Under Section 10(c) of the Workmen's Compensation Act, compensation must be computed on the basis **of** an annual wage of $2,220.00, making decedent's average weekly wage $42.69, and his compensation rate the maximum **of** $15.00 per week, plus 17½%, or $17.63 per week. The decedent had no children under sixteen years of age dependent upon him for support at the time of his death.

Claimant is therefore entitled to an award under Section 7(a) of the Workmen's Compensation Act in the amount of $4,000.00. The death having occurred as a result of an injury sustained after July 1st, 1943, this amount must be increased 17½% or $700.00.

Award is therefore made in favor of the claimant, Maude Deans, in the amount **of** $4,700.00 to be paid to her as follows:

$1,002.40 which has accrued and is payable forthwith;

$3,697.60 is payable in weekly installments of $17.63 per week, beginning September 11th, 1945, for a **period of 209 weeks, with an additional Anal payment of $12.93.**

All future payments being subject to the terms and conditions of the Workmen's Compensation Act of Illinois, jurisdiction of this cause is specifically reserved for the entry of such further orders as may from time to time be necessary.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 3904—Claim denied.)

With leave to present additional evidence.

ERNEST C. CARLS BY MRS. MARJORIE VAN STONE CARLS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 11, 1945.

Claimant, pro se.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

ILLINOIS STATE TRAINING SCHOOL FOR BOYS, ST. CHARLES, ILLINOIS—*when State liable for payment of damages to property caused by escaped inmates—an award will be made therefor.* Where it appears that a group of inmates after their escape from the institution, were apprehended at the time and place of the wreck of an automobile which was previously stolen, and the provisions of Chapter 23, Section 372 (a) Illinois Revised Statutes 1943, have been complied with, an award may be made for the amount of damages sustained and proved.

FISHER, C. J.

Claim was filed April 10, 1945 for Eight Hundred Eight Dollars and Twenty-seven Cents ($808.27) under the provisions of Chapter 23, Section 372(a) Illinois Revised Statutes 1943, which reads as follows:

"Whenever a claim is filed with the Department of Public Welfare for payment of damages to property, or for damages resulting from property being stolen, heretofore or hereafter caused by an inmate who has escaped from a charitable institution over which the State of Illinois has control while he was at liberty after his escape, the Department of Public Welfare shall conduct an investigation to determine the cause, nature and extent of the damages inflicted and if it be found after investigation that the damage was caused by one who had been an inmate of such institution and had escaped, the said Department may recommend to the Court of Claims that an award be made to the injured party, and the Court of Claims shall have power to hear and determine such claims."

Claimant alleges that Alfred Bartosik, John Brant, Wesley Beaty, Vincent Litwicki, Walter Racinowski and Thomas Thario escaped from the Illinois State Training School for Boys at St. Charles, Illinois, on July 12, 1944. On the night of July 12th or 13th a 1941 Nash Sedan Automobile belonging to Ernest C. Carls was stolen from a locked garage. The same night the said automobile was wrecked and the six named escapees were apprehended at the time of the wreck by Deputy Sheriff Harry Crawford of Kane County.

As a result of the theft and wrecking of the said automobile, claimant sustained damages in the amount of $808.27. The Department of Public Welfare on March 14, 1945, filed herein a report and recommendation, as follows:

"Having been presented with a claim for damages to an automobile filed by the above claimant, the Department of Public Welfare, pursuant to Section 372a of the Charities Act relating to claims for damages by inmates of charitable institutions, has investigated the allegations set forth and reports as follows:

From the information thus obtained it appears—

1. THAT the above named Ernest C. Carls and Marjorie Van Stone Carls bear the legal relationship of husband and wife and that the said Ernest C. Carls entered the service of the United States, February 13, 1942, having last been reported to be in New Guinea.

2. THAT Ernest C. Carls on or about November 11, 1940 in consideration of a purchase price of Twelve Hundred and Fifty Dollars ($125.00) purchased from Art's Garage, Sycamore, Illinois, one automobile described as a '41 Nash Six Sedan, Motor No. 357235. Registration (license No. 842-786) shows title to be in Ernest C. Carls, 132 Fabian Street, Sycamore, Illinois, subject to a lien given the Sycamore Finance Company in the sum of $750.00.

3. THAT, since Ernest C. Carls entered the service of his country, his wife, Mrs. Marjorie Van Stone Carls has had the custody and keeping of the above described automobile at Virgil, Illinois, where she has been living with relatives.

4. THAT on or about the night of July 12-13, 1944, said described automobile was in a locked garage, when it was stolen and subsequently wrecked, entrance into the garage having been gained by breaking a large window.

5. THAT, although there were no known outside witnesses to the theft, six boys were apprehended at the actual time of wrecking of the herein described automobile by Deputy Harry Crawford of the Kane County Sheriff's office. The said six boys were identified as follows:

Alfred Bartosik, John Brant, Wesley Beaty, Vincent Litwicki, Walter Racinowski, Thomas Thario, all of whom were at liberty after having escaped from the St. Charles School for Boys, July 12, 1944.

6. THAT, because of said theft and wrecking of said automobile, damages resulted for which claim is presented in the amount of $808.27, based upon items listed in:

(a) Invoice of Leader Oil Company, Virgil, Illinois. (Copy attached under the caption Exhibit "A"). ..... $ 47.06

(b) Estimate obtained from Van's Garage, Virgil, Illinois. (Copy attached under the caption Exhibit "B") 90.90

(c) Estimate obtained from Harkers Body Shop, Aurora, Illinois. (Copy attached under the caption Exhibit "C") 670.31

7. After a careful consideration of the facts presented and it appearing the damages herein mentioned arose through no fault of claimant, but did result from the wilful acts of the boys named, who had been inmates of the Illinois State Training School for Boys, at St. Charles, Illinois, a charitable institution over which the State of Illinois has oontrol and while they were at liberty after having escaped from said institution, IT IS HEREBY RECOMMENDED that an award be made to claimant in the amount for which claim is presented, to-wit: Eight Hundred and Eight and 27/100 Dollars (808.27), representing the aggregate of items listed in EXHIBITS "A", "B", AND "C".

Respectfully submitted,

DEPARTMENT OF PUBLIC WELFARE

By RODNEY H. BRANDON, *Director.*

The record consists of the following:

Statement of Claim.
Stipulation of Facts.
Statement, Brief and Argument by the Attorney General on behalf of Respondent.
Waiver of Statement, Brief and Argument by Claimant.
Departmental Report.

From the report of the Department of Public Welfare it appears that the automobile belonging to claimant was subject to a lien given on November 11, 1940 to

the Sycamore Finance Company in the sum of Seven Hundred Fifty Dollars ($750.00) at which time the automobile was purchased by claimant. It does not appear from the record that this lien of $750.00 has been paid or otherwise satisfied, and we must assume that it remains a valid lien for such sum.

This claim is based entirely upon estimates necessary to repair the damaged automobile and, while these estimates appear to be reasonable, no award can be made until the repairs are actually made and paid for, or a release of the said lien is obtained. Until such release is obtained, the Sycamore Finance Company could very well be an "injured party" and entitled to share to the extent of its interest in any award which might be made herein.

For the reason stated, an award must be denied, and an order is entered herein giving claimant sixty (60) days to present such additional evidence as indicated herein to be required. In the event of claimant's failure to so produce such additional evidence, the claim will stand dismissed as of the date of this order.

(No. 3904—Claimant awarded $808.27.)

Supplemental Opinion filed November 13, 1945.

FISHER, C. J.

Subsequent to our original Opinion filed herein at the September **1945** term of this Court claimant, in accordance with leave granted, has filed additional evidence which we indicated was required before the rights of the parties could be determined.

The record now consists of the following : Statement of Claim, Report and Recommendation of the Department of Public Welfare, Statement, Brief and Argument

on behalf of Respondent, Receipt for payment in full of lien to Sycamore Finance Company, Paid Voucher for repairs, and Stipulation of Facts.

The facts in this claim are fully set forth in our original Opinion.

The Department of Public Welfare, in accordance with Chapter 23 of Section 372(a) Illinois Revised Statutes 1943, made an investigation of this claim and found the facts as alleged by claimant to be true. The Department found the damages to claimant's car were caused by inmates who had escaped from the Illinois State Training School for Boys at St. Charles, Illinois, which is a state charitable institution.

The Attorney General, in a brief and argument filed herein, concludes that "The report of the Department and the sworn statement of the claimant are in complete agreement as to the facts, and the Department has recommended that an award be made. The charges for the damage done to the automobile in the possession of the claimant are itemized fully and appear to be reasonable in every respect. As the procedure outlined by the statute has been followed in detail and there is no disagreement as to the facts, it appears that the claimant is entitled to an award in the amount of $808.27."

An award is entered in favor of claimant, ERNEST C. CARLS, in the sum of Eight Hundred Eight and 27/100 Dollars ($808.27).

(No. 3703—Claimant awarded $432.08.)

SILAS HAMSON, **Claimant,** *vs.* **STATE OF ILLINOIS, Respondent.**

Opinion* filed *November 13, 1945.

J. HOWARD HELMICK, for claimant.

GEORGE **F.** BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—when an award may be made under —*for temporary total—and partial* permanent loss of use of right leg. Where an employee of State Division of Highways—while riding in bed of truck owned by the department—sustains injuries resulting from the upsetting of the truck, due to the driver having lost control of the same, his injuries arose out of and in the course of his employment and an award may be made therefor under the Workmen's Compensation Act upon compliance with the requirements thereof.

DAMRON, J.

This complaint was filed April 8, **1942** and seeks an award under the Workmen's Compensation Act.

The record consists of the claimant, report of Division of Highways, stipulation in lieu of evidence, waiver of brief of claimant and respondent.

Silas Hamson, according to the record, resides in Decatur, Illinois. He was first employed by the Division of Highways on April **23, 1941** as a laborer at a rate of $.50 per hour and continued in that capacity and at that wage rate until the time of the alleged accident on which this claim is based. He had no children under sixteen years of age dependent upon him for support at the time of the accident in question.

On July **23, 1941** at about 8:25 A. M., the claimant was riding in the bed of a truck owned by the respondent. The truck was traveling from Decatur to Farmer City to engage in patching concrete pavement on arrival at that point. At the "Y" intersection of S. B. I. Routes **48** and 121, the driver lost control of the truck, the truck upset and the claimant was thrown to the ground and injured. He was taken immediately to St. Mary's Hospital in Decatur and placed under the care of Dr. John **J.** Hopkins, of that city. He remained under the care of Dr. Hopkins until November 26, **1941.** On December **9, 1941,** the claimant was sent to Chicago by the respondent and there placed under treatment by Dr. H. B. Thomas, an orthopedic surgeon. He remained under the care of

this physician until the 13th day of February, 1942. According to the stipulation filed herein, claimant received compensation for temporary total disability from the date of his injury to the 23rd day of February, 1942, amounting to the sum of $382.14, at a compensation rate of $11.58. He claims to be entitled to temporary total compensation to the 31st day of May, 1942, after which date he was able to return to work.

In addition to the additional temporary total disability claimed, claimant also seeks an award of $11.58 per week for 190 weeks for the loss of use of his right leg, as provided by the Workmen's Compensation Act of the State of Illinois.

In the report of the Division of Highways, filed in this case are reports of the physicians who treated claimant. Dr. John J. Hopkins, who first attended the claimant directly after the accident and in whose care he remained until November 26, 1941, summarizes claimant's injuries as follows:

. "Sprain and bruise left and right ankles, bruises left thigh posterior lower ⅓, bruise over right crest of illiac. Laceration left face. Fracture longitudinal through head of right tibia. Treatment-suture of laceration on face, immobilization of fracture. Estimated date of ability to return to work—12 weeks."

Dr. H. B. Thomas, to whom he was sent after being discharged following the treatment rendered by Dr. Hopkins, made a report to the Division on December 18, 1941, as follows:

"Treatment—baking and massage and use to right knee and ankle. Prognosis—fair. The right knee will continue to give, some trouble. The right ankle should recover completely. Not yet able to work * * *."

On February 13, 1942, Dr. Thomas reported:

"Mr. Hamson was dismissed today and is on his way home by train. His measurements of the motion in the ankle are about the

same as last time—dorsi flexion of both ankles are almost alike, plantar flexion of the right ankle is 10° less than the left. Supination is 50% of normal and pronation is 35% of normal. (2/3/42.) The motion at the knee is practically full. You will remember, however, that he had a bad fracture. He will probably have a disability of the right knee of 10% and of the right ankle 10%. I believe he could do some light work, but I am sure he won't want to."

From a consideration of this record, we make the following finding. That the claimant and respondent were, on the **23rd** day of June, **1941,** operating under the provisions of the Workmen's Compensation Act; that on the date last above mentioned, said claimant sustained accidental injuries which arose out of and in the course **of** the employment; and that notice of said accident was given said respondent and claim for compensation on account thereof was made on said respondent within the time required under the provisions of Section **24** of this Act.

The record discloses that claimant was being paid by the respondent the sum of **$4.00 per** day for an eight hour day or an annual wage of $800.00. This in turn equals an average weekly wage of **$15.38,** making his compensation rate amount to the sum of **$7.69.** However, the accident having occurred subsequent to July **1, 1939,** the compensation is increased under the Act by 10%, making his weekly compensation rate **$8.45;** that claimant, at the time of the injury was 58 years of age and had no children under sixteen years of age dependent upon him for support; that the necessary first aid, medical, surgical and hospital services were provided by the respondent, amounting to the sum of **$480.16;** that the sum of **$382.14** was paid to the claimant for temporary total disability at a compensation rate of **$11.58.** That claimant was temporarily totally disabled from June 23, **1941** to May **31, 1942,** being **48** weeks and six days, for which he is entitled to be paid at $8.45 per week, amounting to

the sum of $412.84, leaving a balance due claimant for temporary total disability of $30.70.

From the medical testimony, it appears that claimant has sustained a 25% permanent loss of use of his right leg, amounting to 47½ weeks at $8.45 per week, which is $401.38. Claimant is also entitled to $30.70 additional temporary total disability compensation making a total sum due claimant of $432.08, as provided in Section 8, paragraph 15e of the Workmen's Compensation Act, as amended.

An award is therefore entered in favor of claimant in the sum of $432.08, all of which has accrued and is payable forthwith.

This award is subject to the approval of the Governor as provided in Section 3 of "an Act concernng the payment of compensation awards to State employees."

No. 3787—Claimant awarded $21.00.)

THE WESTERN UNION TELEGRAPH COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 13, 1945.

CLAIMANT, pro se.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

SERVICES—*lapse of appropriation before payment—sufficient unexpended balance—when award may be made for value of.* Where it clearly appears that claimant rendered services to the State at the request of its duly authorized officers and for which an appropriation existed out of which payment could be made therefor, an award may be made for compensation for such services, in an amount not in excess of that agreed upon, where such appropriation lapsed before payment was made for same. on claim filed within a reasonable time.

DAMRON, J.

The above named claimant is a foreign corporation

existing under and by virtue of the laws of the State of New York, and having authority to do business in the State of Illinois. Among other services rendered to the public by the claimant is installing and maintaining time service by means of electrically controlled clocks.

During the month of October, **1940,** at the request of the Secretary of the Senate of the State of Illinois, at Springfield, the claimant maintained regular time service by means of an electrically controlled clock for the State Senate. This clock was kept in operation and services were maintained by the claimant at the request of the aforesaid official from October 1940 through July, **1942.** The total charges for this service rendered by claimant amounts to the sum of Twenty-one ($21.00) Dollars.

This claimant, prior to filing its complaint, demanded payment of Twenty-one Dollars from the aforesaid Secretary of the Senate of the State of Illinois, but payment was refused for the reason that the account had not been vouchered in time to be paid before the appropriation therefor had lapsed.

From the record it is evident that the services were rendered as per invoice attached to the complaint. And it is further evident from the record that had claimant billed the respondent in apt time the account would have been paid in due course for the reason there existed appropriations sufficient to pay each item at the time the services were rendered.

Where it dearly appears that claimant rendered services to the State at the request of its duly authorized officers and for which an appropriation existed out of which payment could be made therefor, an award may be made for compensation for such services, in an amount not in excess of that agreed upon, where such appropriation lapsed before payment was made for same, on claim

filed within a reasonable time. *Riefler, et al.,* vs. *State,* 11 C. C. R., 381. *Western* Union *Telegraph Company* vs. *State,* 12 C. C. R., 329.

An award is therefore entered in favor of claimant in the sum of Twenty-one ($21.00) Dollars for the following periods: October, 1940, $3.00; October, 1941, $3.00; July, 1941, $3.00; October, 1942, $3.00; April, 1942, $3.00; January, 1942, $3.00; July, 1942, $3.00.

(No. 3806—Claimant awarded $3,608.97.)

JAMES MCGAUGHEY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 13, ***1945.***

JOHN F. GIBBONS, for claimant.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*state highway policemen within provision* ***of—when*** *an award may be made under—claims for travel expense not compensable* ***under.*** Where it appears that a state highway motorcycle policeman while on patrol duty assigned to him, is struck by an automobile, with resulting injuries that subsequently required amputation of left leg at the mid calf—his injuries arose out of and in the course of his employment and an award may be made therefor under the Workmen's Compensation Act upon compliance with the requirements thereof.

There is no provision in the Act for payment of transportation, or for sick leave.

FISHER, C. J.

This claim is for benefits under the provisions of the Workmen's Compensation Act. The original complaint was filed July 7, 1943, and an amended complaint on May **1,1945.** The facts are not in dispute.

Claimant was employed by respondent as a State Highway Policeman at a salary of $175.00 per month.

On the date of September **4,** 1942 while on his regu-

larly assigned patrol on U. S. Highway **66** between Mt. Olive and Litchfield, Illinois, claimant's motorcycle was struck by an automobile, resulting in serious injuries to claimant. The left leg above the ankle was torn and there was some crushing of the bone of the leg. Claimant's leg was amputated at the mid calf. Subsequent to this amputation infection developed which necessitated further operation, which further operation was performed on October 10, **1943.** The infection continued, and on December **1, 1943** claimant entered the hospital for further operative medical treatment. On July **3, 1944** a further operation and amputation become necessary, which was performed on **July 3,1944.**

Claimant seeks temporary total disability, reimbursement for medical expenditures, and compensation for the total loss of use of his left leg.

The record consists of the Complaint, amended Complaint, Statement, Brief and Argument by Claimant and Respondent, Reports of Division of Highways filed **August 31,1943** and May **25,1945,** and Stipulation of Facts.

It is stipulated that the Department reports shall constitute the record in this case.

Respondent had immediate notice of the accident, and the complaint was filed within one year from the date of the injury. Claimant has complied with the jurisdictional requirements of the Workmen's Compensation Act,

In the Stipulation it is agreed that claimant's compensation rate amounts to **$16.50** per week.

Claimant, by reason of the various amputations, was totally incapacitated for a period of **25–6/7** weeks, for which period he is entitled to compensation at the rate of **$16.50 per** week, a total of **$426.64.** Claimant 'suffered the entire loss of use of his left leg, for which, under the

Workmen's Compensation Act, he is entitled to compensation for **190** weeks at the rate of **$16.50** per week, a total of **$3,135.00.** Claimant was compelled to pay for medical expenses, for which he is entitled to reimbursement in the sum of **$469.00.** Claimant is also entitled to have paid the sum of $55.00 for medical services to Dr. J. Albert Key, St. Louis, Missouri, which remains unpaid.

Claimant was paid for non-productive time a total of **$476.67,** which must be deducted from the amount due claimant under the provisions of the Workmen's Compensation Act, leaving a balance due claimant of $3,-**608.97.**

Claimant seeks compensation for travel expense from Alton and Edwardsville to Barnes Hospital in St. Louis, and return, approximated **at $132.50;** also compensation for **16** days sick! leave, which leave he claims he was entitled to at the time of his injury. We find no provision in the Workmen's Compensation Act for the payment of estimated cost of transportation, or for sick leave, and the claim in regard to these two items cannot be allowed.

The Court of Claims Act, Section 8(d) provides that determination of claims of this kind "shall be in accordance with the substantive provisions of the Workmen's Compensation Act."

An award is therefore entered in favor of the claimant, James McGaughey, in the sum of **$3,608.97,** payable as follows:

$ 469.00	**Reimbursement for medical and hospital bills paid by claimant.**
55.00	**To Dr. J. Albert Key, St. Louis, Mo.**
2,739.00	**Which has accrued and is payable forthwith.**
345.97	**Payable at the rate of $16.50 per week, commencing November 16, 1945.**

(No. 3865—Claimant awarded $5,228.75.)

ESTHER HISLER, Claimant, vs. STATE **OF** ILLINOIS, Respondent.

Opinion filed November 13, 1945.

CLAIMANT, pro se.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S *COMPENSATION* **ACT**—*employee of the state, Division of Parks and Memorials within provisions of—when circumstantial evidence deemed conclusive to show decedent came to his death during the course of and within the scope of his employment.* Where it appears that an employee of the Division of Parks and Memorials, whose duties required him to be about the Illinois and Michigan Canal, and evidence showed him to be a **man** *of* good habits and **a** conscientious worker, and whose body was found submerged in the water, with no abrasions or injuries appearing on the body, it is reasanable to conclude that the decedent came to his death during the course of and within the scope of his employment and an award may be made to his widow and dependent child under sixteen years of age, under Section 7 (c) and 7 (h-3) of the Workmen's Compensation Act.

FISHER, C. J.

Claimant seeks an award under the Workmen's Compensation Act for the death of her husband, Walter G. Hisler.

At the time **of** the death of Walter G. Hisler he was an employee of the State of Illinois, Division of Parks and Memorials. He was first employed by the Division on April 10, **1941,** and claimant alleges that on March **16, 1944** her husband, the said Walter G. Hisler, met his death while performing his duties and in the course of his employment.

The record consists of the Claim, Departmental Report, copy of Testimony taken at Coroner's Inquest, Verdict of the Coroner's Jury, Stipulation, certified copy of Claimant's Marriage Certificate, and Waiver of Statement, Brief and Argument by claimant, pro se, and respondent by the Attorney General.

The report of the Division of Parks and Memorials, by George W. Williams, Superintendent, shows that during the year preceding his death on March **16, 1944,** Mr. Hisler was regularly employed as Custodian of the Illinois and Michigan Canal Parkway, and his yearly salary was the sum, of $1,560.00. Among his duties were those of keeping the Illinois and Michigan Canal between Peru and Buffalo Rock free of debris, repairing and maintaining pathways, roads and bridges, maintaining and keeping all shelter houses clean, keeping the residence assigned to him and surrounding area orderly and in repair, and acting in a policing capacity on Sundays and holidays.

On the morning **of** March 16, **1944** at approximately 8:45 **A.** M. Mr. Hisler was returning on foot to his residence from the city of LaSalle where a truck assigned to him had been taken for inspection and repairs. The Department Report concludes --Mr. Hisler was recognized by his superiors and fellow workers as a conscientious and capable workman, free of domestic and financial worries, and affable in meeting and dealing with the public. The investigation of the Division of Parks and Memorials leads to the conclusion that Mr. Hisler's death arose out of and in the course **of** his employment."

On the 20th day of March, **1944** the Coroner **of** LaSalle County held an inquest to ascertain the cause of death and the Coroner's jury found as follows:

"We, the undersigned Jurors, sworn to inquire of the death of Walter Hisler on oath do find that he came to his death by accidental drowning while on duty as an employee of the State of Illinois in his regular occupation along the tow-path of the Illinois-Michigan Canal. He was last seen alive Thursday morning, March 16, 1944, at 8:45 A. M. His death presumably occurred at 9:30 A. M., March 16, 1944. He was employed as Maintenance man and Lock-Tender at Illinois-Michigan Canal."

The only question that presents itself **for** determina-

tion here is-did the deceased meet his death in the course of and within the scope of his employment.

It is stipulated that the Departmental Report of the Division of Parks and Memorials shall constitute the record in this case. The Department, in this report, concludes that the decedent met his death within the scope and as a result of his employment. The facts upon which this conclusion is reached are not included in the report. The testimony at the Coroner's Inquest ascertained the nature of the employment of the decedent and traced his movements until he was last seen, which was on the morning of March 16, 1944.

This court, feeling it should have more of the facts and information than was disclosed by the record in this case, did, on its own initiative, request the Division of Parks and Memorials to file a report of the facts disclosed by its investigation. The Division thereupon filed a letter from Terrence Martin, Custodian of Starved Rock State Park addressed to George A. Williams, Superintendent of State Parks and Memorials, which letter is dated November 3, 1945 and states, in substance, as follows:—That Mr. Martin personally investigated and inquired into the facts concerning the death of Walter G. Hisler; that Mr. Hisler disappeared on the 16th day of March, 1944 and that an intensive search for him began on the morning of March 17, 1944; that the search was conducted by State Park employees, the Sheriff's Office local police authorities and Mr. Martin. That on the 18th day of March, 1944 about 1:40 P. M. John DeGroot of Peru and Stanley Murray, Deputy Sheriff, while dragging the lock and basin adjoining, found the body of Walter G. Hisler; that the body was immediately taken to the funeral home, at which time the Coroner was notified. The undertaker, Anton Friedrich, as related by

Mr. Martin, stated that "there were no abrasions or injuries found on the body and that lots of water came out. The Coroner said the body had been in the water about three days. The Coroner's Jury again examined the body the following morning at the inquest. As they found no indication of foul play, and from evidence on hand, a verdict of drowning was returned. The Coroner informs me that no post-mortem was ordered by the family or authorities, therefore there was none."

While the burden of proving that an injury or death arose out of and within the scope of the employment rests upon the claimant, this proof cannot always be made by positive and direct evidence. In this case, no one saw the deceased between the morning of March **16, 1944** and the time his body was found in the canal on March **19,1944.** The cause of his death can only be determined from certain facts and circumstances, from which a reasonable conclusion can be reached. The decedent was proved to be a man of good habits, **a** conscientious worker, without domestic or financial worries, and when last seen was performing the duties required of him by his employment. Part of such duties brought him to and about the bank of the Illinois-Michigan Canal. His body was found submerged in the water. The record rather conclusively shows that no reasonable conclusion can be reached other than that the decedent came to his death during the course of and within the scope of his employment. His surviving widow, Esther Hisler, is, therefore, entitled to the benefits of the Workmen's Compensation Act.

Decedent left him surviving his widow and one child under the age of sixteen years dependent upon him for support at the time of his death.

Decedent's salary for the year preceding his death

amounted to $1,560.00. Decedent's weekly wage was $30.00, and his compensation rate $15.00 per week, and, having one child under the age of sixteen years at the time of his death the weekly rate must be further increased 5% under Section 7 (3), plus 17% under Section 7 (1), or a total of $18.50 per week.

Claimant is entitled to an award under Sections 7 (a) and 7 (h-3) of the Workmen's Compensation Act, in the amount of $4,450.00, which must be increased 17½% under Section 7 (1), making a total of **$5,228.75.**

An award is therefore entered in favor of claimant, Esther Hisler, in the sum of $5,228.75, payable as follows:

$1,604.21—86 5/7 weeks, March 16, 1944 to November 13, 1945—all of which has accrued and is payable forthwith;

$3,624.54—Payable $18.50 per week, commencing November 13, 1945.

This award is subject to the approval of the Governor as provided in Section 3 of "an Act concerning the payment of compensation awards to State employees."

(No. 3873—Claimant awarded $1,523.53.)

HARRY **WILSON,** Claimant, *vs.* **STATE** OF **ILLINOIS,** Respondent.

Opinion filed November 13, 1945.

CLARENCE B. **DAVIS,** for claimant.

GEORGE F. BARRETT, Attorney General; **C. ARTHUR** NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S *COMPENSATION* ACT—*Janitor-Clerk in the office of the Clerk of the Appellate Court for the Third District—Springfield, Illinois—within provisions of—when an award may be made under.* Where it appears that claimant while performing his duties was obliged to use a ladder, and fell therefrom, sustaining injuries, the accident occurred in the course of his employment and an award may be made for compensation therefor, in accordance with the provisions of the Women's Compensation Act upon compliance with the requirements thereof.

SAME—cost of drugs and ultra violet ray lamps when not prescribed or advised by claimant's physician, must be disallowed.

FISHER, C. J.

Claimant alleges that on August 10, **1943** he was injured by reason of an accident arising out **of** and in the course of his employment by the respondent as Janitor-Clerk in the office **of** the Clerk of the Appellate Court for the Third District, at Springfield, Illinois.

Claimant seeks an award for medical expenses incurred, compensation for temporary total disability, and for permanent partial disability.

The record consists **of** the Complaint, Report **of** the Clerk of the Appellate Court for the Third District; **of** Illinois, Claimant's Transcript **of** Evidence, and Statement, Brief and Argument of both Claimant and Respondent.

From the record, it appears that on August 10,1943 claimant was cleaning a file in the Docket Room in the office of the Clerk of the Appellate Court for the Third District. In order to reach the top file it was necessary for claimant to use a ladder and, as he was standing **on** this ladder, he fell, striking his back and shoulders on a chest of drawers. The Chief Deputy Clerk was immediately notified of the accident.

The claimant continued to work until August **31, 1943,** at which time he states he was unable to continue to perform his duties because of his injuries. Claimant was treated by Dr. Martin B. Jelliffe from August **10, 1943** to October **27,1944,** and thereafter was treated by Dr. **J. J.** Pleak because of the death of Dr. Jelliffe.

Claimant was paid **$250.00** for unproductive time subsequent to August **31, 1943,** which must be deducted from any compensation found to be due claimant.

From the record, we find that claimant and respond-

ent were operating under the provisions of the Workmen's Compensation Act; that claimant was injured in the course of his employment and is entitled to the benefits of the Workmen's Compensation Act.

Claimant is married and has no children under 16 years of age dependent upon him for support. Claimant expended the sum of $277.50 for medical services rendered on account of his injuries, for which sum he is entitled to be reimbursed. Claimant also seeks reimbursement for $160.00 expended for the rental of an ultraviolet ray lamp, and $61.21 expended for drugs. It does not appear that the expenditures for drugs and an ultraviolet ray lamp were necessary to cure or relieve the injury, or that they were prescribed or advised by claimant's physician. The claim for reimbursement of these expenditures must, therefore, be denied.

Claimant has not established his claim for permanent partial disability, and this portion of his claim must be denied.

Dr. Pleak testified on August 17, 1945 that, in his opinion claimant at that time was able to do light work. We conclude from the evidence that the claimant was disabled from August 31, 1943 until April 17, 1945, for which period he is entitled to receive compensation in accordance with the provisions of the Workmen's Compensation Act.

Claimant's annual salary was $1800.00, and his average weekly wage exceeds the maximum of $15.00 provided by section 8 (h) of the Workmen's Compensation Act; therefore, claimant's compensation rate would be the maximum of $15.00, increased by 17½% by the provision of section 8 (m), or $17.63 per week. Claimant is entitled to have and receive from respondent the sum of $17.63 per week from September 1, 1943 to April 17, 1945,

a period of 84–6/7 weeks, or **$1,496.03,** plus **$277.50** expended for medical .services, from which must be deducted the sum of **$250.00** paid to claimant for unproductive time, leaving a balance due claimant of **$1,523.53.**

An award is therefore entered in favor of claimant, Harry Wilson, for **$1,523.53,** all of which has accrued and is payable forthwith.

This award is subject to the approval of the Governor as provided in Section **3** of "an Act concerning the payment of compensation awards to State employees."

(No. 3895—Claimant awarded $906.56.)

GEORGE M. GAMMON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 13, 1945.

ROY C. MARTIN, for claimant.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*employee of the Department of Public Works and Buildings within provisions of—when award* may *be made under.* **Where it appears that claimant, while in the course of his employment, suffers injuries resulting from a fall from a truck and thereafter sustains a fifty per cent permanent partial loss of use of his right hand, he is entitled to compensation therefor, under the provisions of the Workmen's Compensation Act upon compliance with the requirements thereof.**

ECKERT, J.

On July 8, **1944,** the claimant, George **M.** Gammon, an employee of the State of Illinois, Department of Public Works and Buildings, while repairing the pavement on Illinois Route No. **148** south, of Christopher, Franklin County, Illinois, slipped from a truck, and fell backwards onto the pavement. He sustained a fracture of his right arm above the wrist.

Immediately following the accident, claimant **was**

placed under the care of Dr. W. W. Sherer, of Christopher. He was treated by Dr. Sherer until September 9, 1944, when the doctor reported to the respondent that claimant was able to return to light work, and that no permanent disability was expected. Dr. Sherer discharged claimant as of that date.

At the time of the accident, claimant and respondent were operating under the provisions of the Workmen's Compensation Act of this state, and notice of the accident and claim for compensation were made within the time provided by the act. The accident arose out of and in the course of decedent's employment.

The claimant is a man sixty-five years of age, and has no children under sixteen years of age dependent upon him for support. He had been employed by the respondent since June 19, 1944 at the rate of sixty cents an hour. Employees of the respondent, engaged in the same capacity, and at the same rate as claimant, are employed less than two hundred days a year; eight hours constitute a normal working day. No claim is made for medical or surgical services, but claim is made for temporary total disability, and for twenty-five per cent permanent loss of use of claimant's right hand.

Claimant was incapacitated from the date of the injury, July 8,1944, until September 9, 1944, a period of nine weeks. Under the provisions of the Workmen's Compensation Act, claimant's average weekly wage was $18.46, and his compensation rate is $9.23, plus 17½%, or $10.84 per week. For nine weeks temporary total incapacity, claimant was therefore entitled to the aggregate amount of $97.56. He was paid by the respondent, however, the sum of $112.40, or an over-payment of $14.84. This amount must be deducted from any award made in this case because the claim for additional com-

pensation for temporary totrl disability is not sustained by the record.

The claimant, testifying on his own behalf, stated that he had complete use of his right hand prior to the injury; that the fingers of the right hand are stiff; that he can only partially close his hand with great effort; that he has no strength in his right-wrist; that it is very painful and does not rotate; and that the right wrist is thicker than the left.

Dr. W. M. Sherer, of Christopher, the treating physician, testifying on behalf of claimant, stated that claimant had sustained a Colles' Fracture with some deformity; that an X-ray picture taken after the cast was removed showed a complete repair of the fracture line; that claimant has some inability to flex and extend his fingers, and slight limitation in extension and flexion.

From all the evidence, and from personal observation of the claimant by the court, it appears that claimant has sustained a fifty per cent permanent partial loss of use of his right hand. He is therefore entitled to an award in the sum of **$921.40** for such permanent partial. disability, from which must be deducted the over-payment of **$14.84.**

An award is therefore made to the claimant in the sum of **$906.56,** of which **$661.24** has accrued and is pay-'able forthwith.

This award is subject to the approval of the Governor as provided in Section **3** of "An act concerning the payment of compensation awards to State employees," and is payable, upon approval, from the appropriation from the Road **Fund** in the manner provided in such act.

(No. 3913—Claimant allowed $4,529.80.)

BESSIE I. PERRY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 13, 1945.

CRAIG & CRAIG, for claimant.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—employee of the Department of Public Works and Buildings within provisions of—when an award may be made to dependent widow of claimant whose death resulted from injuries received—in the course of his employment. Where it appears that decedent was acting as patrolman helper on highway, directing traffic, and was struck by an automobile causing him severe injuries which later resulted in his death, the accident arose out of and in the course of his employment and an award may be made therefor to his dependent widow under Section 7 (1) of the Workmen's Compensation Act.

ECKERT, J.

Claimant, Bessie I. Perry is the widow of John B. Perry, "deceased, who was formerly employed by the Department of Public Works and Buildings, as a patrolman's helper. On December 9, 1944, while flagging traffic on U. S. Route No. 45, about four miles south of Mattoon, he was struck by a car. He died April 27, 1945. Claimant, as widow, seeks an award for the death of her husband under the provisions of the Workmen's Compensation Act.

At the time of the accident, which is alleged to have resulted in the death of John B. Perry, the employer and employee were operating under the provisions of the Workmen's Compensation Act of this state, and notice of the accident and claim for compensation were made within the time provided by the Act. The accident arose out of and in the course of decedent's employment.

Decedent had been employed by the respondent con-

tinuously for more than one year prior to his death at an annual salary of $1448.80. Under section 10 (a) of the Workmen's Compensation Act, compensation must be computed on the basis of this annual wage, making decedent's average weekly wage $27.86, and his compensation rate $13.93. The injury having occurred subsequent to July 1st, 1943, this must be increased 17½%, making the compensation rate $16.37 per week. The decedent had no children under sixteen years of age dependent upon him for support at the time of his death.

From the report of the Division of Highways, which has been filed in the case, it appears that at the time of the accident the decedent was one of a group of employees engaged in pavement repair. The group loaded a truck with tools and materials at Neoga, in Cumberland County, and from there worked north on U. S. Route No. 45, stopping from time to time to repair small breaks in the pavement. About 11:00 o'clock in the morning they stopped approximately four miles south of Mattoon, parking the truck on the east half of the pavement facing north. The decedent was south of the truck near the center line of the highway, flagging traffic, and at the time of the accident had stopped north bound traffic to allow south bound traffic to pass the truck. A north bound car, driven by Mr. Van V. Kibler, of Toledo, Illinois, failed to stop at the rear of the line of standing cars, drove onto the shoulder east of the pavement, around the line of parked cars, and back onto the pavement. It struck the decedent before coming to a stop across the center line of the highway, and threw the decedent to the pavement.

Immediately following the accident, Perry was placed under the care of Dr. W. R. Rhodes, of Toledo. On December 13, 1944, Dr. Rhodes reported to the Divi-

sion of Highways that Perry had sustained a fracture of the 7th, 8th, and 9th ribs on the left side, a contusion on the back of the head, bruises on the right shoulder, and bruises up and down the spine. The doctor stated that he expected no permanent disability.

On January 12, 1945, Dr. Rhodes reported further to the Division that he had discharged Perry on January 10, 1945, and that there was no permanent disability. Perry returned to work January 22, 1945. On April 2, however, following complaints of illness, he again consulted Dr. Rhodes, who then made a tentative diagnosis of intestinal obstruction, and on April 8, following an X-ray, recommended that Perry be hospitalized under a surgical specialist. On April 12, Perry was taken by ambulance to Barnes Hospital, St. Louis, Missouri, where he was placed under the care of Dr. Nathan A. Womack.

From the subsequent report of Dr. Womack it appears that Perry was suffering from severe abdominal pain when he entered Barnes Hospital, and had had a complete bowel obstruction for three days. On April 17, an operation was performed, and numerous bands of adhesions were found within the abdomen. In regard to the adhesions, Dr. Womack stated:

"They seem to have originated from a lesion on the right side of his transverse colon. This was definitely infiammatory in type, and the impression gained was that it was connected with inflammation of the omentum in this region. A portion was removed for microscopic study and this was verified. Extending from this area of inflammation there was a band of scar which stretched down to the termination of his small intestine, cutting it off completely. This had apparently been a progressive lesion. It was necessary to establish a new connection between his small intestine and his cecum. This was done and his condition following operation was satisfactory. His post-operative convalescence was good."

On April 27th Perry stated that he had not felt better in the past six or eight months, and was anxious to go home. He had breakfast, and was smoking a cigarette

when he suddenly ceased breathing. Dr. Womack was of the impression that the sudden death was due to embolus to his pulmonary artery, but an autopsy following the death failed to substantiate the theory, and failed completely to show any cause for the sudden death.

In his report to the Division of date May 2, 1945, Dr. Womack also stated:

"In reviewing his lesion insofar as you are concerned in the Division of Claims, I would say that the history of trauma to the abdomen is in complete accord with our operative findings, and I would therefore surmise that at the time of injury he received some damage to the omentum, which resulted in hemorrhage and subsequent scar formation. His small intestine become involved in a band of this scar and as the fibrous tissue oontracted it eventually closed off the small intestine completely.

"This is a very rare situation, but I am of the opinion that a claim on the part of his relatives associating his disease with the injury, has a very definite organic basis."

The court is of the opinion that the death of John B. Perry was a result of the injury which he received on December 9, 1944, and which arose out of and in the course of his employment. Claimant is therefore entitled to an award under Section 7 (a) of the Workmen's Compensation Act in the amount of $4,000.00, which must be increased 17½% under Section 7 (1), making a total award of $4700.00. 'From this must be deducted the aggregate sum of $170.20, compensation payments made to Perry prior to his death, leaving a balance of $4,529.80

Award is therefore made in favor of the claimant, Bessie I. Perry, in the amount of $4,529.80 to be paid to her as follows:

$ 792.78 which has accrued and is payable forthwith:

3,737.02 which is payable in weekly installments of $16.37 per week, beginning November 13, 1945, for a period of 228 weeks, with an additional final payment of $4.66.

All future payments being subject to the terms and conditions of the Workmen's Compensation Act of Illi-

nois, jurisdiction of this cause is specifically reserved for the entry of such further orders as may from time to time be necessary.

This award is subject to the approval of the Governor, as provided in Section 3 of "An act concerning the payment of compensation awards to State employees," and is payable, upon approval, from the appropriation from the Road Fund in the manner provided in such act.

(No. 3725—Claimant awarded $134.05.)

ADA **DIAL,** Claimant, *vs.* **STATE OF ILLINOIS,** Respondent.

Opinion filed *January* ***9, 1946.***

Petition of *claimant* ***for rehearing denied*** *March* ***19, 1946.***

K. **C. RONALDS,** for claimant.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—***employee of Anna State Hospital, Anna, Illinois, within provisions of—when an award may be made under.*** Where it appears that an attendant at the Anna State Hospital fell and suffered injuries on the left side and forehead, an award may be made for temporary total disability, under the provisions of the Workmen's Compensation Act.

SAME—permanent *partial* ***disability—failure of evidence to*** support *claim.* Claimant failed to establish by competent evidence the difference between the average amount which she earned before the accident and the average amount which she is able to earn in some suitable employment after the accident.

ECKERT, **J.**

On June 18, **1941,** the claimant, Ada Dial, was employed by the respondent as an attendant at the Anna State Hospital, Anna, Illinois. While discharging her duties as such attendant, she fell on concrete steps of the hospital, sustaining injuries which she alleges resulted in permanent partial loss of the use of her right

hand, her left eye, and her back, and total and permanent disability.

At the time of the injury, claimant and respondent were operating under the provisions of the Workmen's Compensation Act of this state, and notice of the accident and claim for compensation were made within the time provided by the act. The accident arose out of and in the course of decedent's employment.

From the-departments) report, it appears that, as a result of the fall, claimant received several small abrasions and a suffusion at the left side of the forehead, and several small scratches on the left upper arm; that immediately after the injury she complained of pains in the right wrist joint and on the left thigh. There were, however, no evidences of visible injury to the wrist or thigh, the injuries were considered mild, and there were no symptoms of brain concussion.

Claimant continued to perform her regular duties until August 5, **1941,** at which time she was obliged to quit work because of the severity of the pain in her back. She also complained of pain in the region of the gall bladder, left wrist and both knees, and complained of shortness of breath on exertion and swelling of her feet and ankles. She was hospitalized at the Anna State Hospital from August 6, **1941** to August **19, 1941,** when she left the hospital and returned to her home at McLeansboro, Illinois.

From a physical examination of the claimant, made at the hospital in April **1942,** the following diagnosis was made :

1. Chronic, progressive, productive, osteo-arthritis, involving the entire spine and all joints and body surfaces.

2. Nitral stenosis with partial decompensation. The examining physician stated that the arthritic changes of the spine were of long standing, and that "while the alleged injury may have aggravated the

pain in her back, it is not the original cause." He found no evidence of injury involving the spine and stated that the condition would gradually progress until claimant developed a "Poker Spine."

The claimant, testifying on her own behalf, stated that she suffered an injury to her left eye, and that since the accident there is "a blur over the sight of that eye"; that she has not been able to open the lid of the left eye as well as she could before the accident, and that the upper lid droops. She also testified that there is a sunken place about an inch and a quarter in diameter in her forehead as a result of the injury. She testified that since the accident she can not grasp anything with the right hand, and that the bone of her right thumb is pushed up. There was no further or corroborating evidence as to these specific injuries. Claimant stated that she had constant pain in her back since the injury, and that walking increased the pain. She stated that since she returned to her home in August, **1941** she has not been able to do her ordinary house work; that she is unable to stand on her feet because of the pain in her back; and that any work she does must be done sitting down.

Claimant testified that she had a leave of absence from August **19, 1941,** until March, **1942** when she returned to the institution and told the secretary of the Managing Officerthat she would return to work if she could not get an extension of her leave. She stated: "I said there were some places I could work and some I couldn't. I said I wouldn't want to try to work where I would have to climb steps or on a violent ward." Following a physical examination, however, claimant was advised that she was not physically able to perform her duties as an attendant. She did not return to the hospital.

James Shriver, a radiologist, of Harrisburg, was called as a witness on behalf of claimant. He testified

that he made an X-ray of claimant's back on June 13, 1942; that the X-ray disclosed claimant's first lumbar vertebra tied to the second lumbar on both borders by arthritic deposits; that it disclosed deposits between the second and third, and between the third and fourth vertebræ, with lipping of the fourth lumbar vertebra. He also stated that the fourth lumbar vertebra showed a traumatic effect, and that the fifth lumbar vertebra had some arthritic deposits, with the right border shorter than the left.

The witness was then asked whether claimant was completely disabled from the performance of her usual labors. His answer was: "Well, I don't like to answer that question. I don't know."

Dr. E. M. Cummins, also called as a witness for the claimant, testified that the X-ray, taken by James Shriver on June 13, 1942, showed arthritic deposits not only of the lumbar vertebra?, but of the dorsal vertebræ; that there were arthritic deposits between the ninth and tenth dorsal vertebrae which had coalesced, as had the eleventh and twelfth dorsal vertebræ. He testified that the first and second lumbar vertebrae, the second and third, and the fourth and fifth, had completely coalesced; that there was a crushing of the upper and outer lip of the fourth lumbar vertebra on the left side; that the X-ray showed very distinctly that claimant: "can't use this spine at all," He stated that the crushing of the upper and outer lips of the fourth lumbar vertebra could have been caused by trauma, and that the condition was permanent and progressive.

It is clear from the record that claimant sustained an injury in the course of her employment. She has failed to prove, however, by a preponderance of, the evidence, that she has sustained any specific loss as a result of that

injury, or that she is totally and permanently disabled. The testimony of claimant's own witness negatives her claim for a permanent and total disability; her testimony that she is unable to do any type of work is insufficient to entitle her to an award, and is contradicted by her own offer to return to work at the hospital.

If claimant has sustained a permanent partial disability, she must establish by competent evidence the difference between the average amount which she earned before the accident and the average amount which she is able to earn in some suitable employment after the accident. *Evans* vs. *State,* **13 C. C. R. 65;** *Doyle* vs. *Xtate,* **13** C. C. R. **179.** This, claimant has made no attempt *to* do, and in the absence of such proof no award can be made for partial permanent disability.

Claimant, however, is entitled to an award for temporary total disability from August **6, 1941** to April **8, 1942,** a period of thirty-five weeks, for which time she was paid the total amount of **$252.00.** During the year preceding the injury, claimant was employed by the respondent at a salary of $67.00 per month. Her compensation rate is $11.03 per week.

She is therefore entitled to receive the sum of **$11.03** per week for thirty-five weeks, or **$386.05,** from which must be deducted the sum of **$252.00** paid to her for unproductive time.

An award is made to claimant in the amount of **$134.05,** all of which has accrued and is payable forthwith.

This award is subject to the approval of the Governor as provided in Section **3** of "An Act concerning the payment of compensation awards to State employees."

(No. 3765—Claim denied.)

HARRY J. LAUGHLIN, Claimant, *vs.* **STATE OF ILLINOIS, Respondent.**

Opinion filed January 9, 1946.

H. GRADY VIEN and **CHARLES** W. HATCH, of counsel, for claimant.

GEORGE F. **BARRETT,** Attorney General; **C.** ARTHUR NEBEL, Assistant Attorney General, for respondent.

FEES AND SALARIES—*claim for use of privately awned automobile by State Highway Patrolman—when the same will be denied.* It is always incumbent upon the claimant to prove his case by greater weight or preponderance of the evidence and no **award will be entered against the State unless a claim has been clearly proven and it is shown that some legal or equitable right has been denied the claimant.**

DAMRON, **J.**

This complaint was filed on the 23rd day of November, **1942.** It is a claim for Two Hundred Twenty Dollars ($220.00), alleged to be due claimant for the use of his private owned automobile while employed by the respondent at the rate of four cents (4c) per mile.

The record consists of the complaint, departmental report, transcript of evidence, and claimant's waiver of brief and argument.

The record discloses that, the above named claimant was employed by the respondent in its Department of Public Works and Buildings, Division of Highways, as a State Highway Patrolman. The complaint alleges, and the evidence of the claimant supports the allegation, that the claimant was instructed and directed by his superior officers, in the Division of Highways, to use his own automobile in the performance of his official duties for some months prior to December, **1940.**

The complaint further alleges, and the claimant so testifies, that the respondent did reimburse him for the

use of such car, except for the months of December, 1940, and January, 1941. That during the month of December, 1940, the claimant says that he is entitled to the sum of $99.72, and for the month of January, 1941, the sum of $120.28, making a total of $220.00, all as shown by detailed statements attached to the complaint and marked Exhibits A and B.

On January 8, 1943, the Division of Highways filed its departmental report, showing, in chronological sequence, the history of the employment of this claimant for the respondent, together with copies of letters which were sent to the claimant by the Department. This report shows that on January 25,1941, this claimant wrote a statement in reference to his claim and filed it with the Department. It is in words and figures as follows:

"To whom it may concern, I, the undersigned, have orders from Don Clark, who at the request of myself asked for meals when I was out 12 or 14 hours a day, this he said could not be granted, but he allowed me to drive my personal car and I could be compensated that way, and he knowing that a State Police car had been assigned to me for the purpose of using in the capacity of Drivers' License Examiner. This car was issued to me for the purpose of saving the State money that I would be entitled to if I used my personal car, as I was being sent from one town to another on Special Examinations that meant lots of miles of travel."

It is always incumbent upon the claimant to prove his case by greater weight or preponderance of the evidence, and no award will be entered against the State unless a claim has been clearly proven and it is shown that some legal or equitable right has been denied the claimant. The burden of proof is always upon the claimant. We do not find sufficient proof in this record to warrant a finding for the claimant, and there is a total lack of any proof to show that claimant is entitled to be reimbursed for the alleged use of his private owned automobile during the course of his employment for the months of December, 1940, and January, 1941. Claim denied.

(No. 3818—Claimant awarded $271.25.)

JOHN A. STEN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 9, 1946.

ERMAN A. KING, for claimant.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*an employee* of *Division* of *Highmays within provision of—when award may* be *made under.* Where it appears that claimant in the course of his employment, was cleaning weeds from the sickle bar of a power motor, and his left ring finger was caught in the machinery and severed, an award may be made therefor under the Workmen's Compensation Act upon compliance with the requirements thereof.

The award may be made for temporary total disability and partial permanent disability due to loss of the third linger of the left hand.

DAMRON, J.

This complaint was filed on the 4th day of November, 1943. It seeks an award for an alleged injury to claimant while employed by the respondent. The record consists of the complaint, departmental report, waiver of statement, brief and arguments on behalf of claimant and respondent.

This claimant resides at Osco, Henry County, Illinois, and at the time of the injury complained of he was employed by the Division of Highways.

On September 8, 1943 while claimant was cleaning weeds from the sickle bar of a power motor east of the village of Cambridge on S. B. I. Route 44 in Henry County, an operator of the power motor eased the brake pressure and allowed the machine to roll back down the slope. Claimant's left ring finger was caught in the machinery and severed at the junction of the third and fourth phalanges. He was immediately taken to a physician at Cambridge who rendered first aid. Later claimant was treated by Dr. W. H. Meyer of Coal Valley.

On September **11, 1943** Dr. Meyer reported as follows :

"Crushing injury to left ring finger. Distal phalanx severed. Amputated left ring finger at distal joint. About one-half inch middle phalanx removed by bone forceps to allow flap to cover stump. Permanent disability is loss of one-half of left ring finger."

Claimant received temporary total disability for the period from September 16 to September 26, **1943.** On September 27, **1943** claimant returned to work for the Division.

The Departmental Report shows that all medical and hospital bills incurred by claimant in connection with this injury were paid by respondent.

From a consideration of the record we make the following findings :

That the claimant and respondent were on the 8th day of September, **1943** and prior thereto operating under the provisions of the Workmen's Compensation Act; that on the date last mentioned said claimant sustained accidental injuries which did arise out of and in the course of the employment; and that notice of said accident was given said respondent and claim for compensation on account thereof was made on said respondent within the time required under the provisions of said Act; that the earnings of the claimant during the year next preceding the injury were **$960.00,** and that the average weekly wage was **$18.46;** that claimant at the time of the injury was 70 years of age and had no children under **16** years of age dependent upon him for support; that all necessary first aid, and all medical and hospital services required were provided for by respondent herein.

We further find that as a result of such accident claimant has sustained a complete loss of the third finger,

commonly called the ring finger, of the left hand.

An award is therefore entered in favor of claimant, John A. Sten, in the sum of **$271.25,** all of which has accrued and is payable forthwith.

This award is subject to the approval of the Governor, as provided in Section **3** of ".An act concerning the payment of compensation awards to State employees,'' and is payable, upon approval, from the appropriation from the Road Fund in the manner provided in such act.

(No. 3853—Claimant awarded $1,302.35.)

CITY OF JACKSONVILLE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion pled *January 17, 1946.*

WALTER BELLATI, City Attorney, for claimant.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

CONTRACTS—*State institutions liable for water supplied to it by municipal corporation—purchase of water for use at Illinois School for the Deaf is authorized by law.* Where it appears that the City of Jacksonville actually supplied the water to the Illinois School for the Deaf and was not fully paid for the same because of an error in reading the meters, the State institution must pay for water actually used, because it is under law required to procure and furnish water for its inmates and pay for the same.

ECKERT, J.

The claimant, City of Jacksonville, a municipal corporation, maintains and operates a municipal water plant supplying water for residential and commercial purposes. The Illinois School for the Deaf, conducted by the respondent at Jacksonville, under the direction of the Department of Public Welfare, is one of the large consumers supplied by the municipal water plant.

To measure the water used by the school, three meters were installed by the claimant. The monthly

readings of the three meters are combined, and the respondent billed for the combined consumption at a flat rate of **9.4** cents per thousand gallons.

It is alleged by claimant, that during the year **1941,** one of the meters failed to function properly, was removed and repaired, and again placed in operation on August 16th with the indicators set at zero. The claimant alleges that thereafter the meter was incorrectly read until January, **1943,** the meter reader failing to add a cipher to his reading of the gallons consumed.

In January, **1943,** a corrected reading showed an **actual** consumption of **27,419,175** gallons in excess of the gallonage which had been billed the respondent during the period in question, and the claimant alleges that there was due the municipality for this excess the sum of **$2,577.40.**

After some discussion between an officer of the respondent and the claimant, a compromise settlement was suggested which would have reduced the amount due claimant to **$1,546.86.** Of this amount, the respondent, on September **30, 1943,** paid the sum of **$773.45,** leaving a balance of **$773.41.**

Claimant also alleges that there was a balance due the municipality on water bills submitted from January, **1943,** through June, **1943,** totaling **$1,728.94.** Of this amount, however, it is admitted that **$1200.00** has now been paid by the respondent, leaving **$528.94** unpaid upon the bills for that period. There is no dispute as to this item. The total claim, therefore, now amounts to **$1302.35.**

The respondent contends that the claimant has not proved its claim by preponderance of the evidence. It contends that Ralph W. Hutchison, who testified on behalf of the claimant, is not shown to have examined the

meter personally, and that the testimony of the person or persons who made the readings was not introduced. Mr. Hutchison is the Superintendent of Collections for the Water and Light Department of the City of Jacksonville, and among his duties is the compilation of bills and accounts due to the claimant from various customers, together with the billing of the customers, and the collection of accounts. He testified that when he first became Superintendent, he discovered the erroneous readings of the meter in question, and immediately sought to remedy the error. He testified that the meters had been read and the bills presented each month; that the readings were incorrect in that the reader failed to add a cipher, the same error occurring for sixteen consecutive readings before being discovered. The respondent made no objection to Mr. Hutchison's testimony; furthermore, the Department of Public Welfare, in its report forming a part of the record in the case, substantially confirmed the alleged error, which was an error in the reading of the meter, and not an error in the operation of the meter. The meter itself showed the correct reading. The court is of the opinion that the claimant has proved the material allegations of its claim by a preponderance of the evidence.

The court is also of the opinion that an allowance of this claim is not contrary to Article IV, Section 19 of the Illinois Constitution. Payment of this claim is in no way payment of extra compensation, directly or indirectly, after the rendition of services or the making of a contract. The purchase of water for use of the Illinois School for the Deaf is authorized by law. The principle involved was clearly set forth in the case of *Fergus* vs. *Brady,* **277** Ill. **272,** at page **279.** The Supreme Court there said:

"In Section 19, claims under any agreement or contract made by express authority of law are excepted, and if there is some particular and specific thing which an officer, board, or agency of the State is required to do, the performance of the duty is expressly authorized by law. That authority is express which confers power to do a particular identical thing set forth and declared exactly, plainly and directly, with well defined limits, and the only exception under which a contract exoeeding the amount appropriated for the purpose may be valid is where it is so expressly authorized by law. An express authority is one given in direct terms, definitely' and explicitly, and not left to inference or to implication, as distinguished from authority which is general, implied or not directly stated or given. An example of such express authority is found in one of the deficiency appropriations to the Southern Illinois Penitentiary which has been paid, and serves only as an illustration. The authorities in control of the penitentiary are required by law to receive, feed, clothe and guard prisoners convicted of crime and placed in their care, involving the expenditure of money, which may vary on account of the cost of clothing, food and labor beyond the oontrol of the authorities, and which could not be accurately estimated in advance for that reason or by determining the exact number of inmates."

The authorities of the Illinois School for the Deaf have an obligation under the law equal to the obligation of the authorities in control of a state penitentiary.

The respondent also contends that any award in this case should be computed on a block commercial rate instead of a flat rate of 9.4 cents per thousand gallons. Whether or not the respondent has previously paid a flat rate pursuant to a written agreement, is disputed, but it is undisputed that for a long period of time the respondent has in fact paid claimant for water on the basis of a flat rate. The difference per thousand is very slight, and the evidence shows that the respondent has been furnished water by the claimant below the cost price to the municipality. The court is of the opinion that the claim is properly computed upon the flat rate charged by the claimant and previously paid by the respondent.

Claimant and respondent also disagree as to whether or not a compromise was offered by the respondent and accepted by the claimant. This is immaterial since the

claimant has indicated its willingness to accept the so-called compromise sum.

An award is therefore entered in favor of the claimant in the amount of **$1302.35.**

(No. **3889—Petition for rehearing denied.**)

FRANCIS HALLISEY, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed January 9, 1946.

T. V. HOULIHAN, for claimant.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

JURISDICTION—*when petition for rehearing will be denied.* Where the record discloses that the petition for a rehearing was not filed within thirty days from the determination of the claim, as required by Rule 33, of this court, *a* rehearing will be denied.

FISHER, C. J.

A petition for a rehearing of this cause was filed herein on November **13, 1945.**

The record discloses that the petition for a rehearing was not filed within thirty **(30)** days from the determination of the claim, as required by Rule **33** of this Court, and a rehearing must, therefore, **be** denied.

(No. **3892—Claimant awarded $4,198.47 and life pension.**)

OSCAR PHELPS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 9, 1946.

R. GERALD TRAMPE, for claimant.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—attendant employed at* Dixon *State Hospital within provisions of act—when injuries result in total and

permanent disability—an award may be made under—including pension for life. Where it appears that claimant while acting as attendant in Dixon State Hospital. caring for the feebleminded and epileptic patients, was suddenly and viciously attacked and suffered injuries which medical testimony showed resulted in his being totally and permanently disabled, an award may be made therefor under the Workmen's Compensation Act, Section 8 **(b)** and (1), and thereafter a pension for life under Section 8 (b).

FISHER, C. J.

This claim was filed December 8, 1944, and the record of the case completed on November 19, 1945. The claim is for benefits under the Workmen's Compensation Act because of injuries received by the claimant while engaged in his duties as an employee of respondent.

Claimant alleges that on the 23rd day of January, 1944 he was employed by respondent in the Department of Public Welfare as an attendant at the Dixon State Hospital, Dixon, Illinois ; that his duties required him to supervise and care for dangerous feeble-minded and epileptic patients.

That, on January **23, 1944** while attending a patient, one James Martin, claimant was suddenly and viciously attacked by the said James Martin and other patients who beat the claimant about the head and body, **knock**ing him to the floor, rendering him unconscious and inflicting numerous and serious injuries from which claimant has not recovered and which have left him permanently and totally disabled. Claimant seeks an award under the Workmen's Compensation Act for total permanent disability and a pension for life.

The record consists of the Complaint, Department Report, Transcript of Evidence, Abstracts of Evidence, and Waiver of Brief by both claimant and respondent.

At the time of the injury claimant was married and had no children under sixteen years of age dependent upon him for support.

Claim was filed in apt time. Claimant and respondent were operating under the provisions of the Workmen's Compensation Act, and claimant is entitled to the benefits of the said Act. The facts are not in dispute, and the only question to be determined here is the extent of the injuries sustained by the elaimant.

From the evidence, it appears that Mr. Phelps was taken to the Illinois Research Hospital at Chicago, Illinois, for examination and treatment, but the result of this examination and treatment is not disclosed by the evidence except by the testimony of his daughter, Mrs. Maxine Hobbs, which testimony is entirely incompetent.

Dr. Stephen P. Ward, a physician and surgeon at Metropolis, Illinois, testified that he was the family physician of the claimant since **1934,** and that prior to the injuries complained of claimant was a normally healthy man. Dr. Ward testified that on July 6, 1944 he examined the claimant and made a complete physical examination; that he found the claimant to be very emotional; that claimant did not respond promptly to questions, and would cry upon the slightest questioning; that he diagnosed 'the claimant as a very emotional man with symptoms of residual organized occipital clot from brain concussion, with symptoms of right cervic pressure injury. Dr. Ward further testified that it was his conclusion that the claimant was totally and permanently incapacitated.

Dr. Ward testified that he again examined the claimant on September **12,1944** at his office in Metropolis, and that at this time he found no improvement.

On July 6, **1944** Dr. Ward made a written report of his examination of the claimant, which is, in part, as follows :

"This is to certify that I ham examined Oscar Phelps of Golconda,

Illinois, and in my opinion I believe that he is totally and permanently disabled for the following reasons:

Persistent occiput headache, vertigo, nervousness and emotional instability.

I believe that he has residual organized blood clot in the right occipital area, pressure on the right cervical nerves, causing neuralgic symptoms over their distribution. This is probably due to injury by external violence which occurred January 23rd, 1944. I believe this man will make little or no improvement for at least six months, at which time he should be rechecked for confirmation of complete and total disability."

Dr. Ward again examined the claimant on September 8, 1944, and on September 12, 1944 reported as follows:

"This is to certify that on September 8th, 1944, I re-examined Oscar Phelps and found no improvement in his physical disability and believe him to be totally and permanently disabled.

This disability is due to external violence received January 23rd, 1944 and are persistent headache, vertigo, nervous and emotional instability, which I believe to be a residual blood clot in the right occipital area. There still remains a neuralgic symptom over the right cervical area, distribution of it without a doubt was caused by external violence causing fracturing pressure on the anterior roots. Briefly, this man is totally and permanently disabled from the result of his injury."

There is much testimony by Mr. Phelps, and by his wife, Ressa Phelps, all being to the effect that the claimant is totally disabled.

The record shows that claimant was paid $501.53 for unproductive time, which must be deducted from any award entered herein.

From all the evidence herein, we must conclude that the claimant is totally and permanently disabled as a result of the injuries sustained while engaged in his duties as an employee of respondent, and is, therefore, entitled to the benefits of the Workmen's Compensation Act. At the time of the injury claimant's salary was $110.00 per month, and employees engaged in similar capacities received a salary of $110.00 per month, or $1320.00 per

year. Claimant's compensation rate is $14.91 per week. Claimant is, therefore, entitled to an award under the Workmen's Compensation Act, Section 8 (b) and (1) in the sum of Forty-Seven Hundred Dollars ($4700.00), less overpayment of Five Hundred One and 53/100 Dollars ($501.53)' or a total of Forty-one Hundred Ninety-eight and 47/100 Dollars ($4198.47); and thereafter, a pension for life under Section 8 (f) equal to 8 per centum of the amount due under Section 8 (b) and (1).

An award is therefore entered in favor of claimant, Oscar Phelps, in the sum of $4198.47, payable as follows:

$1535.73, which; is accrued and payable forthwith;

$2662.71, payable in weekly installments of **$14.91,** beginning with the week of January **13, 1946;** and thereafter a pension for life in the sum of **$376.00** annually, payable in monthly installments of **$31.33.**

This award is subject to the approval of the Governor as provided in Section 3 of "an Act concerning the payment of compensation awards to State employees."

(No. 3905—Claimant awarded **$4,700.00.**)

THELMA M. **EDWARDS,** Claimant, *us.* **STATE** OF ILLINOIS, Respondent.

Opinion filed January 9, 1946.

MARK **C.** KELLER, for claimant.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION **ACT**—***attendant at Dixon State Hospital within provisions of—when award may be made to dependant widow of deceased employee—when petition for partial lump sum payment must be denied.*** Where it appears that an attendant at Dixon State Hospital, while in the course of his employment, was attacked and choked to death, an award may be made to his dependent widow under Section 7 (a) of the Workmen's Compensation Act.

Where there is a surviving widow and no child or children, there is no authority under the Workmen's Compensation Act for the commutation of the award, or any thereof, to an equivalent lump sum.

ECKERT, J.

Claimant, Thelma Edwards is the widow of Elmer J Edwards, deceased, who was formerly employed by the Department cf Public Welfare as an attendant at the Dixon State Hospital. 'On November 28, 1944, while performing his duties as such attendant, on the night shift at Cottage A-3, he was attacked, choked, and strangled to death by one Michael Peluso, a post-encephalitis patient committed to the hospital by the Juvenile Court of Cook County, Illinois. Claimant, as widow of the deceased employer, seeks an award for the death of her husband under the provisions of the Workmen's Compensation Act.

At the time of the accident which resulted in the death of Elmer J. Edwards, the employer and employee were operating under the provisions of the Workmen's Compensation Act of this state, and notice of the accident and claim for compensation were made within the time provided by the act. The accident arose out of and in the course of decedent's employment.

Decedent had been employed by the respondent continuously for more than one year prior to his death, at a salary of $1,440 per annum. Under Section 10 (a) of the Workmen's Compensation Act, compensation must be computed on the basis of this annual wage, making decedent's average weekly wage $27.70 and his compensation rate $13.85 per week. The death having occurred subsequent to July 1st, 1943, this must be increased 17½%, making the compensation rate $16.27 per week. The decedent had no children under sixteen years

of age dependent upon him for support at the time of his death.

Claimant is therefore entitled to an award under Section 7 (a) of the Workmen's Compensation Act in the amount of $4,000.00, which must be increased 17½% under Section 7 (1), making a total award of $4700.00.

Claimant has also filed a verified petition seeking a partial lump sum payment. She states that Elmer J. Edwards left no real or personal estate of any kind or description; that she has incurred, and is personally liable for the payment of Coroner's fees, arising out of a Coroner's inquest on the body of Elmer J. Edwards, in the amount of $17.50, for the payment of funeral expenses in the amount of $491.30, for the purchase of a burial lot in the amount of $45.70, and for the payment of costs of administration in the estate of Elmer J. Edwards in the amount of approximately $150.00, or a total of $704.50. Claimant states that she owns no real or personal property; that she has no income from any source whatever except wages of $100.00 per month; and that she is the sole support of a thirteen year old son by a former marriage. She requests a lump sum payment of $1800.00, leaving the balance of the award to be paid in regular weekly payments.

The award in this case is not for a definite sum of money payable at all events over a definite period of years and months, but is contingent in its nature. It is, in legal effect, an award that if the claimant should live so long, and should remain unmarried she should have and receive the specified payments at the specified intervals, not exceeding, in all, the sum of $4700.00. Where there is a surviving widow and no child or children, there is no authority under the Workmen's Compensation Act for the commutation of the award, or any there-

of, to an equivalent lump sum. *Illinois Zinc Co.* vs. *Ind. Corn.*, 366 Ill. 480; *Duncan* vs. *State*, 11 C. C. R. 392. The petition seeking a partial lump sum payment must be denied.

Award is therefore made in favor of the Claimant, Thelma M. Edwards, in the amount of $4700.00, to be paid to her as follows:

$ 943.66, accrued, is payable forthwith;

3756.34, is payable in weekly installments of $16.27 per week, beginning January 8th, 1946, for a period of 230 weeks, with an addition final payment of $14.24.

All future payments being subject to the terms and conditions of the Workmen's Compensation Act of Illinois, jurisdiction of this cause is specifically reserved for the entry of such further orders as may from time to time be necessary.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 3910—Claimant awarded $4,700.00.)

PEARLE M. HOFF, Claimant, *vs.* STATE OF ILLINOIS, Respondent.
Opinion filed January 9, 1946.

CLAIMANT, pro se.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*employee of Division of Highways within provision of—when dependent widow may receive award under.* Where it appears that a maintenance helper in the Division of Highways, while in the course and scope of his employment, received an electric shock from which he died, his dependent widow may be given an award under Section 7 (a) and (1) of the Workmen's Compensation Act upon compliance with the requirements thereof.

FISHER, C. J.

Claimant alleges that she is the widow of Arthur

H. Hoff, who, at the time of his death on March **28, 1945** was employed by respondent in the capacity of a maintenance helper by the Division of Highways. That, on March **28, 1945,** the said Arthur H. Hoff, while engaged in his regular duties, received an electrical shock from which he died.

Claimant seeks an award under the Workmen's Compensation Act for the death of her husband, the said Arthur H. Hoff.

The record consists of the Complaint filed pro se, a copy of Marriage Certificate, Departmental Report, Stipulation, and Waiver of Brief and Argument by both claimant and respondent. It is stipulated that the Departmental Report shall constitute the record in this case.

It appears that the deceased left his wife, the claimant herein, entirely dependent upon him for support, and at the time of his death had no children under the age of **16** years dependent upon him.

From the Departmental Report, it appears that **Arthur** H. Hoff was employed by the State of Illinois and, during the year immediately prior to his death his earnings amounted to **$1,553.95,** or an average of **$29.88** per week.

The Department Report further shows:

"On March 28, 1945, at 1:50 P. M., Arthur H. **Hoff,** John Piraino, Ralph W. Dowdle, Clarence C. Kellogg, and William Boyd, employees of the Division of Highways, were performing various elements of work in and about a Division subway pump house, on State Bond Issue Route **121,** where that route passes under the tracks of the Illinois Terminal Railway Company northeast of the city of Decatur. Electric wires, which carry current to the motors in the pump house, are about **14** feet above the north edge of the pump house. At the time of accident, Messrs. Hoff and Piraino were on top of the pump house, Kellogg was at the entrance to the pump house, Dowdle was inside the pump house, and Boyd at the bottom of the pump pit. Kellogg passed a 14-foot section of one-half inch pipe to Hoff and Piraino on top of pump house. This pipe was one of two sections to be installed as a grease

line to serve bearings on a vertical pump drive shaft. A box scaffold had been erected on top of the pump house in connection with the removal of an electric motor and other heavy parts of the pump system. The roof of the pump house is sheet metal and equipped with an opening to permit access into the pump house from above. Mr. Hoff was raising the line of pipe upward and to the north through the scaffold preparatory to passing it down into the pump house. A strong wind was blowing from the south and it is believed that that element contributed to bringing the pipe into contact with the electric transmission wire (4000 volts). In any event, the contact was made and Mr. Hoff rendered unconscious. He fell into an angle of the scaffold. Artificial respiration was administered immediately by fellow employees and continued until the arrival of an ambulance, approximately 15 minutes later. Mr. Hoff was pronounced dead upon the arrival of the ambulance. The Division of Highways had immediate notice of the accident and will not be called upon to pay for any ambulance, medical, or hospital services."

There appears to be no question that the deceased met his death during the course of and within the scope of his employment by respondent and that his widow, the claimant herein, is entitled to the benefits of the Workmen's Compensation Act.

Claimant is entitled to an award under the Workmen's Compensation Act, Section 7 (a) and (1) in the sum of $4,700.00, payable $17.55 per week.

An award is therefore entered in favor of claimant, Pearle M. Hoff, in the sum of **$4,700.00,** payable as follows:

$ 719.55, which has accrued up to January 9, 1946 and is payable forthwith;

3,980.45, payable at the rate of $17.55 per week, beginning with the week of January 16, 1946.

This award is subject to the approval of the Governor as provided in Section 3 of "an Act concerning the payment of compensation awards to State employees."

(No. 3922—Claimant awarded $5,610.16.)

CAROLINE MANGIAMELE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 9, 1946.

CLAIMANT, pro se.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*employee of Department of Public Safety, Division of State Police, within provision of—when award may be made to dependent widow and children of deceased employee under.* Where it appears that deceased employee, while performing police duty, was thrown from his motorcycle and suffered injuries which resulted in his death, the accident arose out of and in the course of his employment—and an award therefor may be made to his dependent widow and children under Section 7 (h) of the Workmen's Compensation Act.

DAMRON, J.

This complaint was filed on the 21st day of July, 1945 by Caroline Mangiamele, surviving wife of Samuel Salvatore Mangiamele, deceased. It seeks an award under the Workmen's Compensation Act for the death of claimant's husband while employed in the Department of Public Safety, Division of State Police.

The record consists of the complaint, Departmental Report, waivers of statement, brief and argument on behalf of claimant and respondent.

The record discloses that claimant's husband was 36 years of age.; that he was married to claimant and was the father of two children, namely Dominico Daniel and Frances Nancy, each under the age of 16 years and dependent upon him for support. The record further discloses that the deceased was first employed by the Department of Public Safety, Division of State Police, on June 13, 1944 as a police officer, at a salary of $175.00 a month. However, on July 1, 1943 his salary was increased to $185.00 a month.

On May **20, 1945** the deceased was assigned by his superior officer to a police detail. It was the duty of this detail to escort official personages to and from ceremonies being held at Soldiers' Field in Chicago. It was the duty of the deceased to ride a motorcycle in front of an official car. On the last mentioned date about **1:15** P. M., while proceeding north on Field Drive in Grant Park, Chicago, deceased motorcycle struck some loose gravel, causing him to lose control of his machine, which struck and caromed off the curb and then crossed a small parkway located in the center of the street before coming to a stop in the south bound traffic lane. Claimant's husband was thrown from the machine, striking his head on the concrete curb of the parkway. He was removed by ambulance to St. Luke's Hospital in Chicago, where he was placed under the care of Dr. H. B. Thomas, Orthopedic Surgeon, who rendered first aid, and kept him under treatment and observation until the 25th day of May, **1945,** on which date claimant's intestate died as the result of the injuries sustained as aforesaid.

The record further discloses that following the accident the Department paid deceased's full salary from the date thereof until the date of his death, or for the period of May **21** to May **25, 1945,** inc. in the amount of **$29.84.** The Division also paid **$614.60** representing physician and doctor bills.

From a consideration of this record we make the following findings:

That on the 21st day of May, **1945** claimant and respondent were operating under the provisions of the Workmen's Compensation Act; that on the date last above mentioned, said claimant sustained accidental injuries which arose out of and in the course of his employment, from which he died; that notice of said

accident was given said respondent and claim for compensation on account thereof was made on said respondent, within the time required by the provisions of Section 24 of said Act; that the earnings of the deceased during the year next preceding the injury were $2,220.00, and that the average weekly wage was $42.69; that the deceased at the time of the injury was **36** years of age and left surviving him his wife, Caroline Mangiamele, the claimant, and two children, all dependent upon him for support.

Claimant is therefore entitled to an award under Section 7 (h) of the Workmen's Compensation Act in the amount of $4,800.00, which must be increased 17½% under Section **7** (L), making a total award of $5,640.00, from which must be deducted the sum of $29.84, paid to deceased for unproductive time, leaving a balance of **$5,610.16.**

An award is therefore entered in favor of claimant, Caroline Mangiamele, in the sum of **$5,610.16,** payable as follows:

$ **620.40** **33 weeks, May 21, 1945** to **January 7, 1946—all of which has accrued and is payable forthwith.**

$4,989.76 **Payable $18.80 per week, commencing January 14, 1946.**

Jurisdiction of this cause is hereby retained for the purpose of making such further orders as may from time to time be necessary herein.

This award is subject to the approval of the Governor as provided in Section **3** of "An Act concerning the payment of compensation awards to State employees."

(No, 3926—Claim denied.)

PETER PERADOTTI, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 9, 1946.

ROBERT J. SPARR, for claimant.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S *COMPENSATION* ACT—*when delay in filing claim will prevent recovery.*

JURISDICTION—*making claim for and filing application for compensation within time fixed in Section 24 of the Workmen's Compensation Act is a condition precedent to jurisdiction, of the Court to hear claim under said* Act. Where it appears that state motorcycle patrolman sustained injuries and accepted an award for permanent total disability, but which he now alleges was less than agreed upon, his failure to assert his claim within one year after date of the accident, where no compensation has been paid, or within one year after the date of the last payment of compensation, where any has been paid, as provided in Section 24 of the Workmen's Compensation Act, renders court without jurisdiction to proceed with hearing on claim filed thereafter.

ECKERT, J.

On May 1st, 1942, the claimant, Peter Peradotti, a motorcycle patrolman in the employ of the respondent, was thrown from his motorcycle while forming part of a motorcycle escort for Admiral Downes of Great Lakes Naval Training Station. Following the accident, claimant was hospitalized at the Highland Park Hospital until May 4,1942, and was under the care of Dr. H. B. Thomas until August 25, 1942, when he returned to work. No claim is made for medical services, nor for temporary disability. Claimant, however, alleges that he suffered a 15% permanent total disability for which respondent agreed to pay him the sum of $720.00; that through error he received only $400.80.

The claim was filed on August 18, 1945, approximately three years after the last payment of compensation. Respondent has filed a motion to dismiss on the

ground that the alleged cause of action is barred by the statute of limitations.

Section **24** of the Workmen's Compensation Act of this State provides that application for compensation must be filed within one year after the date of the accident, where no compensation has been paid, or within one year after the date of the last payment of compensation, where any has been paid. Otherwise the right to file such application is expressly barred. This court has consistently held that it has no jurisdiction of a claim filed after the expiration of the time fixed by the act. *Scott* vs. *State,* **13** C. C. R. **163.**

The claimant, however, contends that his claim is based upon an error in the amount paid to him, and is not such an application **for** compensation as is barred by the act.

The court is of the opinion that claimant has failed to state a cause of action, except under the provisions of the Workmen's Compensation Act. Under the provisions of that act his claim is barred. Section **24** is clear and specific. Claimant chose to accept a sum, which he now contends is erroneous, instead of pursuing his rights under the act within the statutory period. No remedy for such change of position is manifest. The motion of the respondent is granted. Case dismissed.

(No. 3930—Claimant awarded $4,062.34 and Life Pension.)

CHARLES E. HOGAN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 9, 1946.

LITTLE, PERRINE AND CLAUSEN, for claimant.

GEORGE F. BARRETT, Attorney General; WILLIAM L. MORGAN, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—foreman of heating plant at State

Training School for Girls at Geneva, within provisions of-when an award may be made under. Where it appears that the foreman of heating plant at State Training School for Girls, in the course of his duties, became afflicted with carbon monoxide poisoning, caused by coal being stored in the room where he worked and the testimony of medical witnesses shows that he is thereby totally and permanently disabled, an award may be made therefor under the Workmen's Compansation Act upon compliance with the requirements thereof.

DAMRON, J.

Claimant, Charles E. Hogan, has been employed by the respondent since October 12,1925, at the State Training School for Girls at Geneva, as foreman of the heating plant. He was paid for this work $210.00 a month until July, 1944. From the last mentioned date he has been paid $241.50 per month.

On September 26,1944 he went on duty at the School at 11:00 P. M. to fire the boiler and was to work until 7:00 A. M. In the room where this claimant worked coal was stored. Claimant testified there was about one hundred fifty tons or more, and on the outside of the building and adjacent thereto there were about five hundred tons, all on fire, which was emitting smoke and gases. This fire had been smoldering for more than two months prior to September, 1944.

Some time after midnight on September 26, 1944 the claimant collapsed at the institution. He was taken to his home by a fellow employee. A physician was called, who upon examination found him in a collapsed condition; his heart was not functioning properly. He was treated by this physician during that night. The next morning another physician was called to assist in treating claimant. A diagnosis of carbon monoxide poisoning was made by the two physicians.

One of the medical witnesses testified that he made an inspection of the place where claimant worked about two months prior to September, 1944, and found carbon

monoxide gas or fumes being emitted at the aforesaid coal piles. This inspection was made by him, he testified, for the reason that the claimant had an attack of gas poisoning at that time. He again. made an inspection of the boiler room at the institution in September, **1944,** following the collapse of claimant, and again detected the presence of gas fumes from the coal pile. He testified all doors and windows, with one exception, were closed at that time.

The testimony in support of this claim was taken on December **7, 1945.** At that time the physician testified claimant was emaciated, weak, was unable to walk any appreciable distance, poor appetite, had lost weight, even though he had received five blood transfusions. Both medical witnesses agree that claimant since September **26,1944** has been suffering from carbon monoxide poisoning and is totally and permanently disabled.

The Department Report filed in this case shows that respondent paid to claimant disability payments in the following amounts :

September, 1944	$ 28.00
October, 1944	199.84
November, 1944	157.50
December, 1944	147.32
***January,* 1945**	105.00
Total	$637.66

The report also shows that for the twelve months immediately preceding the disability claimant was paid $2,520.00; that the respondent paid the sum of **$328.30** for medical and hospital services rendered to and on behalf of claimant; and that claimant at the time of the disablement was married, but had no children dependent on him for support.

From a consideration of the record we make the following findings :

That the claimant and respondent were on the 26th day of September, 1944 and prior thereto operating under the provisions of the Workmen's Compensation Act; that on the date last mentioned said claimant sustained accidental injuries which did arise out of and in the course of the employment; and that notice of said accident was given said respondent and claim for compensation on account thereof was made on said respondent within the time required under the provisions of said Act; that the earnings of the claimant during the year next preceding the injury were $2,520.00, and that the average weekly wage was $48.46; that claimant at the time of the injury was 65 years of age and had no children under 16 years of age; that necessary first aid, and all medical and hospital services have been provided by respondent herein.

We further find that as the result of such accident claimant has sustained a complete disability which renders him wholly and permanently incapable of work; that claimant is entitled to have and receive from the respondent the sum of $4,700.00 to be paid to him by the respondent at a compensation rate of $17.63 weekly for complete and permanent disability, and thereafter a pension during life annually, payable monthly.

We further find that the sum of $637.66 has been paid to claimant as aforesaid; that $1,181.21 representing 67 weeks at $17.63 has accrued to January 9, 1946, and that said sum less $637.66 heretofore paid to the claimant as aforesaid, to-wit, the sum of $543.55 is payable in a lump sum forthwith; and the balance of $3,518.79 is payable in 199 weekly installments of $17.63 and one final installment of $10.42. After such final

installment is paid, claimant is entitled to an annual pension of **$376.00,** payable to him in monthly installments of **$31.33** during the term of his natural life.

An award is therefore entered in favor of Charles E. Hogan, the claimant, for the total sum of **$4,062.34** and a pension for life, payable as follows:

(a) The sum of $543.55 payable forthwith for compensation which has accrued from September 26, 1944 to January 9, 1946, the sum of $637.66 having heretofore been paid as temporary total disability compensation to claimant.

(b) The sum of $3,518.79 payable in 199 weekly installments at $17.63, commencing on January 16, 1946, and one final installment of $10.42; thereafter a pension as above indicated.

This Court hereby retains jurisdiction of this cause for the making of such other and further orders herein as may be in accordance with the provisions of the Workmen's Compensation Act.

This award is subject to the approval of the Governor, as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees," and is payable, upon approval, from the appropriation from the General Revenue Fund in the manner provided in such act.

(No. **3934—Claimant awarded $1,399.44.)**

EVERETT WAYNE BOBBITT, A MINOR, BY SOPHIE BOBBITT, HIS MOTHER AND NEXT FRIEND, Claimant, *vs.* **STATE OF ILLINOIS,** Respondent.

Opinion filed January 9, 1946.

NEIL H. THOMPSON, for claimant.

GEORGE F. BARRETT, Attorney: General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S *COMPENSATION* **ACT**—*employee of Department of Conservation within provisions of—when award may be made under—for temporary total disability—and permanent partial disability.* **Where** it

appears an employee of the Department of Conservation, while engaged in his regularly assigned duties, sustains injuries to his thumb which subsequently caused him to lose the use of said thumb, such injuries are compensable under the Workmen's Compensation Act, upon compliance with the requirements thereof and an award may be made therefor.

FISHER, C. J.

This claim was filed on October 24, 1945 for benefits under the Workmen's Compensation Act. Claimant alleges that he was employed by the Department of Conservation of the State of Illinois on and prior to October 30, 1944 at the State Game Farm near Mt. Vernon, Illinois at a monthly wage rate of $125.00 per month for eight months and $135.00 thereafter. That on said date while engaged in his regularly assigned duties he was setting and driving posts at the State Game Farm aforesaid, that he was injured when a post driving machine then being operated by him struck his right hand above the second joint of the thumb, almost severing said thumb from his hand. That the State had immediate notice of the accident. That he was thereafter treated by Dr. W. G. Parker of Mt. Vernon until January 1945, and later by Dr. W. R. Bohne in St. Louis, Missouri. On February 3, 1945 he entered the Missouri Baptist Hospital in St. Louis, where he remained until February 16, 1945, during which time his hand and thumb were operated upon by Dr. Bohne. That hospital and medical bills have been paid by respondent.

The record consists of the complaint, Department Report, and stipulation by the claimant and respondent that the Departmental Report shall constitute the record in this case, and waiver in open Court of the right to file statement, brief and argument by both claimant and respondent.

The Department Report sustains the allegations of

the complaint. It therefrom appears that the claimant suffered the entire loss of use of the thumb on his right hand as a result of an injury sustained in the course and within the scope of his employment on the 30th day of October, **1944.** As a result of said injury claimant was totally incapacitated from the date of the injury on October 30, **1944** until May **22,** 1945, at which time he returned to his former employment,.

Claimant was paid **$270.00** for unproductive time, which must be deducted from any award entered herein. Claimant is therefore entitled to temporary total disability for **26** weeks at the rate of **$17.39** per week, a total of **$452.14** less overpayment of **$270.00,** or a total of **$182.14.**

Claimant is also entitled to compensation for the entire loss of use of his thumb the sum of **$17.39** for 70 weeks, or a total of **$1,217.30,** making a total award to claimant for temporary total disability and the complete loss of use of his thumb the sum of **$1,399.44.**

The award to claimant is nearly all accrued, and therefore the entire award is macle payable forthwith. An award is entered in favor of claimant in the sum of $1,399.44, payable in a lump sum forthwith.

This award is subject to the approval of the Governor, as provided in Section **3** of "An Act concerning the payment of compensation awards to State employees," and is payable, upon approval, from the appropriation from the General Revenue Fund in the manner provided in such act.

(No. 3438—Claim denied.)

HAROLD RANDOLPH, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March *19*, 1946.

SHARL B. BASS, GREENBERG & SACHS, for claimant.

GEORGE F. BARRETT, Attorney General; WILLIAM L. MORGAN, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*when* claim *will* be denied—failure *to sustain* claim for *permanent* partial disability. Where it appears that an attendant at Manteno State Hospital was paid for non-productive time, during alleged illness—and which sum exceeds any amount that could be due him as compensation for temporary disability, and he fails to sustain his claim as to permanent partial disability or medical expenditure, the claim must be denied.

FISHER, C. J.

This claim was filed January 15,1940 and the record of the case completed March 23, 1945.

It is stipulated that the claim be submitted for consideration upon the Complaint, Departmental Report and Medical Reports.

The entire record consists of the Complaint, Stipulation, Order to Show Cause, Stipulation, Departmental Report at time of claimant's illness. Subsequent Doctor's Report dated August **20,** 1944, Stipulation, and Waiver of Brief and Argument by respondent.

The record discloses that claimant became ill with typhoid fever while employed at the Manteno State Hospital on August 7, 1939. He seeks an award for permanent partial disability, and for medical care and expenses incurred during his illness.

It is disclosed, by stipulation, that claimant was incapacitated from August 7, 1939 to November 7, 1939 when he returned to his former employment at the same rate of pay. During his disability he was paid the sum of $217.17 for non-productive time; which sum exceeds

any amount that could be due him as compensation for temporary disability under the Workmen's Compensation Act of this State.

There is no evidence whatever to sustain claimant's allegation of permanent partial disability or medical expenditures, and the claim, therefore, cannot be allowed.

The claim for an award is denied.

(No. 3498—Claimant awarded $329.81.)

BESSIE NEWTON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed ***March. 19,*** *1946.*

PAUL D. PERONA AND WILLIAM ZWANZIG, for claimant.

GEORGE F. BARRETT, Attorney General; GLENN **A.** TREVOR and C. ARTHUR NEBEL, Assistant Attorneys General, for respondent.

WORKMEN'S COMPENSATION ACT—*attendant at Manteno State Hospital within provisions of—when award may be made under—for special nurses—and denied for certain medical care.* Where attendant at Manteno State Hospital contracted typhoid, while engaged in the performance of her duties there, during an epidemic of typhoid fever which prevailed at the time, an award may be made for compensation therefor in accordanoe with the provisions of the Workmen's Compensation Act.

Expenditures **for** special nursing services recommended by the hospital, which did not provide same are compensable.

Reimbursement for services of personal physician and special medicines, because claimant merely did not like staff physicians and the medicine they prescribed, must be denied.

FISHER, C. J.

This claim was filed May **18, 1940** and the record completed February **6, 1946.**

The record discloses that on August **21, 1939** claimant, while employed as an attendant at the Manteno State Hospital, contracted typhoid fever. She was treated at the State Hospital from that date until February **14,1940**

and returned to work on April **20,1940** at the same salary she received prior to her illness.

It is disclosed by stipulation in this Court that a typhoid fever epidemic existed at the Manteno State Hospital during the month of August, **1939** and this Court has decided that typhoid contracted under such circumstances was compensable under the Workmen's Compensation Act of this State.

Claimant was paid $441.00 during the period of her illness from August **21, 1939** to April **20, 1940.** Her salary was **$63.00** per month. She had one child under the age of **16** years and therefore is entitled to compensation at the rate of **$12.10** per week for **34** weeks and **4** days, or **$418.31.** She was overpaid **$22.69** for temporary total disability which must be deducted from any award which may be granted to her.

Claimant seeks reimbursement for sums which she expended or otherwise obligated herself for medical, dental and nursing services and medicine.

Ciaimant testified that Dr. Daniel K. Hur, who attended her throughout her illness, was her personal physician; that she of her own choice requested him to attend her because she did not like the medicine they (meaning the staff physicians) were giving her. The dental services were also rendered at her own voluntary request. Under Section 8 of the Workmen's Compensation Act, claimant having elected to obtain these services of her own physician and dentist, cannot be reimbursed for the expenses so incurred.

There is no showing in the record that claimant was compelled to obtain additional medicine, and her claim therefore must be denied.

Claimant expended **$352.50** for nursing services. Her testimony is corroborated by the receipts introduced

in the record. It further appears from the record that claimant was delirious and unconscious from August until the latter part of November while she was in the hospital; that the chief nurse informed claimant she should have a special nurse and, as the hospital did not provide special nurses, claimant should get one. This evidence in conjunction with the physician's report revealing claimant's condition from day to day, justifies an award reimbursing claimant for these expenses.

Claimant is, therefore, entitled to an award in the sum of **$352.50** for charges incurred for nursing services, less **$22.69** overpaid for temporary total disability, leaving a balance of **$329.81.**

An award is entered in favor of claimant, Bessie Newton, in the sum of **$329.81.**

This award is subject to the approval of the Governor as provided in Section **3** of "An Act concerning the payment of compensation awards to State employees."

(No. 3499—Claimant awarded $227.23.)

LUCILLE A. CROUSE, Claimant, vs. STATE OF **ILLINOIS,** Respondent.

Opinion. filed March 19, 1946.

PAUL D. PERONA AND WILLIAM ZWANZIG, for claimant.

GEORGE F. BARRETT, Attorney General;' GLENN A. TREVOR and C. ARTHUR NEBEL, Assistant Attorneys General, for respondent.

WORKMEN'S COMPENSATION ACT—attendant at Manteno State Hospital within provisions of-when claim for total and permanent disability will be denied. Where it appears that an attendant of Manteno State Hospital contracted typhoid fever during an epidemic prevailing there at the time, and was paid for unproductive time—and fails to sustain her claim for total and permanent disability, the same must be denied. Her claim for special nursing service, allegedly due to lack of staff nurses at the hospital during the epidemic, is compensable and an award therefor may be made.

FISHER, C. J.

Claimant, Lucille A. Crouse, while employed as an attendant at the Manteno State Hospital, contracted typhoid fever on August 18, 1939.

It is disclosed, by stipulation, that a typhoid fever epidemic existed at the Manteno State Hospital during the month of August, 1939, and this Court has decided that typhoid contracted under such circumstances was compensable under the Workmen's Compensation Act of this State.

Claimant was a patient in St. Mary's Hospital at Kankakee from August 21 to August 29, 1939, under the care of Dr. O. A. Phipps and Dr. John Horowitz. On June 18, 1940 she was examined by Dr. Paul Hletko of the Manteno State Hospital, who reported that claimant should return to work. She returned to work in the same capacity and at the same wages on July 8, 1940 and worked for four months, but has not worked since.

The respondent paid claimant $555.75 while she was ill for non-productive time. Her monthly wage at the time she became ill was $58.80 per month. She had one child under the age of 16 years. Her compensation rate is $12.10 per week, and she was entitled to $525.48 for total temporary disability for 43 3/7th weeks, and therefore was overpaid $30.27, which must be deducted from any award entered in her behalf.

Claimant, in her complaint, seeks compensation for total and permanent disability and reimbursement for sums allegedly necessarily expended for medical, hospital and nursing services.

The proof is wholly insufficient to sustain any finding of either partial or total permanent disability.

The only claim which merits consideration is that which seeks reimbursement of expenses incurred by claimant for medical, hospital and nursing services.

Claimant testified that Dr. F'hipps was her own doctor; that she went to the hospital at Kankakee at Dr. Phipps' suggestion; that she never requested respondent to furnish a physician and that all such bills were incurred at her own request. Claimant manifestly elected to secure her own physicians and hospitalization at her own expense within the meaning of Section 8 of the Workmen's Compensation Act and is not entitled to an award reimbursing her for medical, hospital and ambulance expense.

Claimant testified that she expended $257.50 for nursing services and the only proof to be found in relation thereto are the names and various amounts paid to the respective persons who are said to have furnished such services as testified to by claimant, and her additional testimony that owing to the epidemic of typhoid fever there was a general shortage of nurses and doctors at the Manteno State Hospital, and they all had to get outside nurses as claimant did. The testimony with respect to the necessity of these services or the failure of the respondent to provide such services is not very substantial *or* impressive, but viewing the record as leniently as possible, it may be regarded as sufficient to warrant an award reimbursing claimant for the expenses incurred for such nursing services.

Claimant is, therefore, entitled to an award of $257.50 for sums expended for nursing services, less the $30.27 overpayment for temporary disability, leaving a balance due claimant of $227.23.

An award is entered in favor of claimant, Lucille A. Crouse, in the sum of $227.23.

This award is subject to the approval of the Governor, as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No, 3834—Claimant awarded **$2,781.74.)**

CATO CASEY, Claimant, *vs.* **STATE OF** ILLINOIS, Respondent.

Opinion filed March 19, 1946.

MAURICE E. GOSNELL **AND NOAH M.** TOHILL, for claimant.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION **ACT**—*when an award may be made under —for partial* ***loss*** *of the use of right arm–both legs and permanent disfigurement of head, face and* neck. Where it appears that claimant in the course **of** his employment as a driver of a truck **for** the Division **of** Highways, suffers severe burns as the result of the accidental spilling by a fellow employee of a container filled with ignited gasoline, an award for consequent injuries may be made under the Workmen's Compensation Act upon compliance with the requirements thereof. An award also may be made **for** the serious and permanent disfigurement of claimant's head, face and neck.

SAME—*when claim for alleged* ***loss of*** *vision and hearing* ***will*** *be denied.* Where proof is wholly inadequate to sustain claim for loss **of** vision an award will be denied. Under Section ***8*** (e) sub-paragraph **16½** permanent *partial* loss of hearing not compensable. The loss **of** hearing must be *total* and permanent in either one or both ears,

FISHER, C. J.

This claim was filed on February **17, 1944** and the record of the case completed and claimant observed by the Court on January **9, 1946.**

On July **24, 1942** claimant, Cato Casey, was employed by the Division of Highways, State of Illinois, as the driver of a truck being used in repair work on S. B. I. Route **12** (U. S. Route 50) about six miles west of Lawrenceville, in Lawrence County, Illinois. When another employee attempted to refuel the tank of an auxiliary motor mounted on the truck, with gasoline from a five gallon can, the gasoline ignited and the container was dropped, spilling the flaming gasoline over Casey. He

suffered severe burns to his face, head, neck, chest, shoulders, arms, hands, thighs and legs.

The respondent paid all medical and hospital expenses amounting to $984.19 and compensation totaling $823.12 for total temporary disability, at the rate of $19.80 per week from July 25,1942 to May 11,1943, which mas the day after his release by Dr H. B. Thomas, his last attending physician. No claim is made for medical or surgical services or for temporary total disability.

This claim filed February 17, 1944 seeks an award for the permanent partial loss of use of the right arm, both legs, right eye, hearing of both ears and for serious and permanent disfigurement of the head, face and hands.

At the time of the accident claimant and respondent were operating under the provisions of the Workmen's Compensation Act, and the accident arose out of and in the course of the employment. No jurisdictional questions are involved.

The record consists of the Complaint, Departmental Report, Transcript of Claimant's Evidence, Transcript of Additional Evidence of Claimant, Abstract of Evidence, and Statement, Brief and Argument of Claimant.

Claimant was not in the employment' of the State for a full year preceding the accident. He was employed by the Division of Highways on May 27, 1942 and thereafter worked regularly in various capacities 'to July 24, 1942, the date of his injury. On that day he was working as a truck driver, at a wage rate of 80c an hour, and the Division in its report states that employees engaged in the same capacity in which claimant was engaged at the time of his accident, worked less than 200 days a year and that 8 hours constituted a normal working day.

As required by Section 10 of the Workmen's Compensation Act, the daily wage of $6.40 multiplied by 200

would make his annual earnings **$1,280.00.** Divide by **52** his average weekly wage would be **$24.62.** Increaseing the award 5% for each of his three children under **16** years and another 10% as required by Section 8 (j) and (1) establishes a weekly compensation rate of **$17.60.** Claimant seeks an increase of 5% for each of four children under **16** years of age. The youngest child was born after the time of the injury and hence cannot be considered under Section 8 (j).

The testimony with respect to claimant's injuries is as follows:

Dr. W. I. Green on behalf of the claiment testified that he examined claimant on June **12, 1944** and found dense keloid formation scars, **7** by 8 inches over the right shoulder region, extending over the outer surface of the right arm and one **4** by 8 inches over the left shoulder; another covering the lower third of the right forearm, the right hand and fingers; a long cicatrical band at the right elbow; scarring of both sides of the face resulting in loss of two-thirds of the right external ear and about one-half of the left ear; scarring of the forehead and skin about the eyes, the neck, upper one-third of the chest, left thigh and leg and inner surface of the right knee. He further testified that the extension of the right arm was limited to about **25** degrees; that Casey showed a diminution in hearing of about **40%** ; that there was a chronic conjunctivitis of the eyes which could have resulted from burns and scars, that it appeared the eyeball had been burnt but had now healed and no scar tissue could be detected.

Dr. V. M. Brian, who also examined Casey on June 12, 1944, testified as to the scars and that he also found a one-fourth, loss of normal function in extending the

right arm and that he thought claimant had lost fifty per cent of his hearing.

Dr. H. Nolan Fisher, who treated Casey's eyelids, reported to the Division of Highways on January 9,1943, "there was no direct injury to the eyeball." Dr H. B. Thomas of the university of Illinois Medical College reported on March 19, 1943 that claimant had 25% disability of the right elbow and 15% of the right knee, and also reported on May 10, 1943 that claimant was improving in the affected areas and that he should be given light work, and although further improvement should be expected the prognosis was poor. Claimant was dismissed on this date, but did not return to the Division of Highways.

The claimant testified he is unable to extend his right arm completely and that he is not able to move his left leg as he could before the burns; that his knees give way after four or five hours of work; that his scars cause him discomfort, particularly in damp, cold weather; that his right eye aches and before the injury his eyes were all right. His physical condition prior to the accident was good; he worked eight to nine hours a day and never tired, but now after working for four hours he has to stop and rest and cannot work all day. He operates an auto repair shop in Pinkstaff, but makes very little money, because he is not able to do a full day's work. He cannot stand on his feet for more than a few minutes and has to change position because of pain.

A. C. Stoltz, a former employer of claimant, who had known him for over twenty years, testified that up to the time of his injury claimant was a strong, able-bodied man, able to do more than an average day's work. After the accident Mr. Stolta had attempted to re-employ claimant and pay him $1.00 an hour, but claimant would work only four or five hours, whereupon, claimant in-

formed the witness he did not care to work under these conditions and would prefer to work in his own shop where he could rest at intervals. He had observed claimant and knows that he does not have the use of his arm and that he is handicapped with his leg.

No evidence was introduced as to the amount of claimant's earnings from his present repair shop.

The Court observed the claimant in 'order to reach a fair estimate of the actual extent of his disfigurement and disability.

It is not possible to determine from the record what loss of vision claimant may have, and the proof is wholly inadequate to sustain any award for partial loss of vision.

Claimant does not contend, nor does the evidence show, that he has sustained a total and permanent loss of hearing in either one or both ears. Under Section 8 (e), sub-paragraph 16½ (by amendment effective July 1, 1929) compensation cannot be awarded for permanent partial loss of hearing. The loss of hearing must be total and permanent in either one or both ears, as a result of accidental injury arising out of and in the course of employment before compensation can be awarded.

From the record and our observation of claimant he is shown to have sustained a permanent partial loss of 25% of the use of his right arm, and serious and permanent disfigurement to his head, face and neck.

Claimant contends there has been a 25% loss of the use of both legs, although the medical testimony does not indicate any definite degree of loss of use. The testimony does show restrictions in the normal functions of the legs and that claimant will be incapacitated in performing his routine duties.

Therefore, it would appear to the Court that a reasonable conclusion would be that claimant has been

permanently injured to the extent of **15% of** the use of both legs and that he is entitled to an award for such permanent partial loss of use.

For the serious and permanent disfigurement to claimant's head, face and neck, he is entitled to compensation under Section 8 (c) in the sum of $880.00 at the rate of **$17.60** for 50 weeks.

The Wells Brothers Co. v. *Industrial Commission, et al,* **285** Ill. **647.**

Smith-Lohr Coal Co. v. *Industrial* **Commission,** **291** Ill. **355.**

International Coal Co. v. *Industrial Commission,* **293** Ill. **524.**

***Chicago** Home* **v.** *Industrial Commission,* **297** Ill. **286.**

For the permanent partial loss of **25%** of the use of his right arm, claimant is entitled to $990.00, computed at **$17.60** for 56¼ weeks (permanent and complete loss being compensable at 50% of the average weekly wage for **225** weeks).

For the permanent partial loss **of 15%** of the use **of** his right leg, claimant is entitled to **$501.60,** computed at **$17.60** for 28½ weeks (permanent and complete loss being compensable at 50% of the average weekly wage for **190** weeks).

For the permanent partial loss of the use of his left leg, claimant is entitled to **$501.60,** at the rate **of** **$17.60** for 28½ weeks.

The total of the above awards is **$2,873.20.** The record shows that claimant was paid **$823.12,** at the rate of **$19.80** for **41 4/7** weeks, whereas, his average weekly rate should have been computed at **$17.60,** or a total **of** **$731.66** for **41 4/7** weeks. This represents an overpay-

ment to claimant of **$91.46,** which must be deducted from his award, leaving a balance now due claimant of **$2,78134.**

An award is therefore entered in favor of claimant, Cato Casey, in the sum of **$2,781.74,** all of which is accrued and is payable forthwith.

This award is subject to the approval of the Governor as provided in Section **3** of "An Act concerning the payment of compensation awards to State employees."

(No. 3846—Claimant awarded **$8.17.)**

STANDARD OIL COMPANY **(IND.),** Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion pled March 19, 1946.

CLAIMANT, pro se.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

SUPPLIES *lapse of appropriation before payment—sufficient unexpended balance in—when award may be made for value of.* Where merchandise is sold to the State, on its order, and received by it and claimant submits a bill in the correct amount therefor within a reasonable time, and due to no fault or negligence on his part, same is not approved and vouchered for payment before lapse of appropriation from which it is payable, an award may be made for the value thereof, where at the time same was furnished there were sufficient funds remaining therein to pay same.

ECKERT, J.

Respondent made purchases from the claimant during the month of June, **1943,** totaling **$8.17.** The appropriation for the payment of these items lapsed before the invoices could be submitted. The invoices were, however, submitted within a reasonable time, and non-

payment is without fault on the part of the claimant. Sufficient funds remain unexpended in the appropriation to pay for the same.

An award is therefore entered in favor of the claimant in the amount of $8.17.

(No. 3866—Claimant awarded **$45.20.)**

MOLINE CONSUMERS COMPANY, Claimant; *vs.* **STATE OF ILLINOIS,** Respondent.

***Opinion** filed March **19,** 1946.*

CLAIMANT, pro se.

GEORGE F. BARRETT, Attorney General, for respondent.

SUPPLIES—*lapse of appropriation before payment—sufficient unexpended balance in—when award may be made for value of.* Where merchandise is sold to the State, on its order, and received by it and claimant submits a bill in the correct amount therefor within a reasonable time, and due to no fault or negligence on his part, Same is not approved and vouchered for payment before lapse of appropriation from which it is payable, an award may be made for the value thereof, where at the time same was furnished there were sufficient funds remaining therein to pay same.

DAMRON, J.

This complaint was filed on July **13, 1944** by the above named claimant pro se.

It seeks an award for **$45.20** for one carload of sand sold and delivered to the Department of Public Works and Buildings, Division of Highways.

The record consists of the complaint and the report of the Division of Highways, said report having been filed August **19, 1944.**

The report discloses that the Division of Highways, acting by and through its 'district engineer, placed an order for a carload of sand with the Missouri Gravel

Company, Moline, Illinois. This order was dated June 13, 1943, and bore the No. D-51493. The actual volume of sand was not designated, but the grade of sand, the rate per ton, and the shipping destination were previously agreed upon. Shipment of the sand was made as per order by the Missouri Gravel Company, a subsidiary of claimant, and was' received and used by the Division of Highways at Meredosia, Illinois. The freight charges on the sand were paid by the Division of Highways.

This report further shows that thereafter, the Division of Highways received no invoices on this sand and for that reason the claim has never been paid.

The complaint shows that the car of sand contained 113,0001 lbs. @ 80c per ton, or $45.20.

Appropriation had been made and funds were available for the payment of such purchases used by the Division, but inasmuch as the appropriation had lapsed, the Division of Highways could not' schedule and pay claimant's invoices from current appropriation and funds.

We have repeatedly held that where goods, wares, and merchandise have been furnished to the State on the order **of** employees of the respondent who had the proper authority to order said goods and that the charges therefor, were fair, reasonable and customary, and that the appropriation had lapsed without any fault or neglect on the part of the claimant, an award will be made for the amount or value of said goods. *(Rock Island Sand and Gravel Company* vs. *State of Illinois,* 8 C. C. R. 165.) An award is therefore entered in favor of the claimant for the use of the Missouri Gravel Company, its subsidiary, in the sum of $45.20.

(No. 3902—Claimant awarded $634.68.)

HARVEY NETHERTON, Claimant, *vs.* **STATE OF ILLINOIS,** Respondent.

Opinion** pled **March 19, 1946.

VERLE W. SAFFORD, for claimant.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General; for respondent.

WORKMEN'S COMPENSATION ACT—*employee of Department of Public Welfare within provisions of-when an award* may *be made* under. Where it appears that an employee of the Department of Public Welfare at Peoria State Hospital, while cutting meat, in the course of his duties, accidentally cut his left index finger, and a subsequent infection resulted in the loss of the use of said finger, an award may be made under the Workmen's Compensation Act for partial permanent disability upon compliance with the requirements thereof.

SAME—*when claim for medical services* will *be denied.* Where claimant elects to secure his own medical and hospital services, no award can be made therefor.

ECKERT, J.

On August 7, 1944 claimant, Harvey Netherton, an employee of the Department of Public Welfare, while cutting meats at the Peoria State Hospital, cut his left index finger at the knuckle. Infection followed, and claimant alleges that as a result of the injury his left index finger, and his left second finger are stiff, and that he is permanently handicapped in the performance of his duties.

Medical treatment immediately following the injury was given claimant at the Peoria State Hospital. Subsequently, and without authority from the respondent, claimant secured the medical services of Dr. E. E. Nystrom, and was hospitalized at the Methodist Hospital at Peoria. The charges for these services totaled **$56.89.** No claim is made for temporary total disability.

At the time of the injury, the employer and employee

were operating under the provisions of the Workmen's Compensation Act of this State, and notice of the accident and claim for compensation were made within the time provided by the act. The accident arose out of and in the course of decendent's employment. **At** the time of the injury claimant had one child under sixteen years of age.

Dr. Robert M. Sutton, testifying on behalf of claimant, stated that claimant's left index finger was the only finger injured; that there is a marked loss of subcutaneous tissue over three-fourths distance of the finger; that there is a sold bony ankylosis of the proximal phalangeal joint; that there is a loss of motion at the terminal phalangeal joint which is 75 to 80 per cent loss at this joint; that there is a loss of motion in the proxima1 phalangeal joint of 100 per cent; that there is a loss of motion at the metacarpal phalangeal joint of 50 per cent; that there is a definite circulatory disturbance of the finger evidenced by some redness. Dr. Sutton also stated that the finger shows a 90 per cent permanent disability.

It is clear that claimant has sustained the permanent loss of the use of the index finger of his left hand to the degree suggested by Dr. Sutton. Claimant's annual earnings during the year next preceding the injury were $2,280.00, making an average weekly wage of **$43.85.** Claimant's compensation rate is, therefore, the maximum of $15.00 per week. The injury having occurred on August **7,** 1944, this must be increased 17½%, or a compensation rate of **$17.63.** For 90 per cent permanent loss of use of his index finger, claimant is entitled **to $17.63** for thirty-six weeks, or the total sum of **$634.68,** all of which has aacrued. Claimant, however, having elected to secure his own medical and hospital services, no further award can be made.

Award is therefore entered in the favor of the claimant in the total sum of $634.68, payable to him forthwith.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 3907--Claimant awarded $57.60.)

LILLIAN N. DOWLING, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 19, 1946.

CLAIMANT, pro se.

GEORGE F. BARRETT, Attorney General; WILLIAM L. MORGAN, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*employee of the Department of Labor within provisions of—when claim for injuries not compensable under—when claim for medical and hospital services may be allowed.* Where it appears that an employee of the Department of Labor, while in the discharge of her duties, slipped and fell, sustaining injuries to her right ankle and left knee, but evidence completely fails to show that she was thereby partially incapacitated from her usual and customary line of employment, the claim will be denied.

Where special medical care is authorized, an award may be made for the cost thereof.

ECKERT, J.

On August 18, 1944, claimant, an employee of the Department of Labor, while in the discharge of her duties as such employee, slipped and fell, sustaining a concussion, and a sprained right ankle and left knee. By direction of her superior, she was placed under the care of her family physician, Dr. Charles H. Connor, until she was able *to* return to work, a period of approximately six weeks.

Claimant had no children under sixteen years of age

dependent upon her for support. She was employed by the respondent at a salary of $125.00 per month. At the time of the accident, the claimant and respondent were operating under the provisions of the Workmen's Compensation Act of this State, and notice of the accident and claim for compensation were made within the time provided by the Act. The aqcident arose out of and in the course of the employment.

No claim is made for temporary disabilty, but claim is made for medical and hospital services in the total amount of **$41.10.** Claim is also made for twenty weeks' loss of use of claimant's left knee and right ankle, and for general disability, due to the alleged head injury.

The claimant, testifying on her own behalf, stated that her physical condition since the accident is "not very good," and that her health was "jeopardized through this fall.'' She said she has pains in her stomach, in the ankle, and in the knee, and that she has a continuous pain in her head. She testified that she had lost time from work since the accident, because of an attack of lobar pneumonia. There is nothing in the record, however, to indicate any connection between the pneumonia and the injury.

Alexander W. Reid, called as a witness on behalf of the claimant, stated that he was head of the Executive Department of the Illinois Industrial Commission; that he authorized the employment of the claimant's family physician to care for her following the injury. He also testified that since the injury claimant appeared to have lost considerable weight and to be in a more nervous condition than she was prior to the injury.

Claimant returned to her same employment six weeks after the aacident, and is now receiving a salary larger than she received prior to the injury. There is not a

scintilla of evidence indicating that the claimant, as a result of the accident, is partially incapacitated from pursuing her usual and customary line of employment; there is not a scintilla of evidence in the record to indicate any specific loss of use of either her ankle or her knee. Defendant has wholly failed to prove any disability resulting from the injury which might be compensated under the provisions of the Workman's Compensation Act of this State.

Claimant, however, is entitled to be reimbursed for the medical and hospital services which she paid, in the total amount of $11.10, and is entitled to the additional sum of **$30.00** for the use of Dr. Charles H. Connor for medical services, and to the sum of **$16.50** for the use of **A.** M. Rothbart, Court Reporting Service, for services in taking and transcribing the testimony in the case.

Award is therefore made in favor of the claimant in the total amount of $57.60 to be paid as follows: $30.00 for the use of Dr. Charles H. Connor; $11.10 to claimant for medical and hospital services; and $16.50 for the use of **A.** M. Itothbart Court Reporting Service.

This award is subject to the approval of the Governor, as provided in Section **3** of "An Act concerning the payment of compensation awards to State employees,'' and is payable, upon approval, from the appropriation from the General Revenue Fund in the manner provided in such act.

(No. 3917—Claimant awarded $1,440.35.)

ARZA MARTIN HORTON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 19, 1946.

J. EDWARD RADLEY, for claimant.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*when an award may be made under.* Where it appears that an employee of the Division of Highways while in the performance of his duties as truck driver sustains injuries to his chest and right hand which result in a 50% loss of the use of his right hand, an award therefor may be made under Section 8, Paragraph *(e)*, sub-paragraph (12) and also sub-paragraph (17) of the Workmen's Compensation Act upon compliance with the requirements thereof.

DAMRON, J.

This is a claim for injuries sustained by claimant on June 16, 1944 while employed by the respondent in its Division of Highways.

The record discloses that on the last mentioned date, claimant was trucking sand for the respondent, from a railroad car to a stock pile at the storage yard of respondent near Peoria, Illinois. Claimant was standing on the running board of a State truck with the cab door open, steering the truck backward. While he was thus backing the truck into a position to unload his cargo of sand, the truck sideswiped a snowplow that was stored in the storage yard. The collision forced the cab door partly closed, crushing claimant between the door and the cab body, sustaining contusion of his chest, and fractured his right hand.

From the report of the Division of Highways, filed in this case, and the statements, briefs, and arguments on behalf of the respondent and claimant, we find that the only question to be determined herein is the nature and extent of claimant's injuries.

The report of the Division of Highways discloses that claimant was immediately sent to St. Francis Hospital, Peoria, Illinois, where Dr. E. C. Burhans was given charge of the case. Claimant was hospitalized there and a cast was applied to his hand. On June 21, 1944, Dr. Burhans sent the following report to the Division of Highways :

"Patient's story of accident—Was backing a truck when, it struck a snowplow, which caused the door of the truck to slam on right arm and hand. Nature of injury—Contusion of chest, fractured 4th and 5th metacarpal bones of right hand. Treatment—Reduction of fractures, application of cast. Estimated date of discharge—About 6 weeks. Estimated date patient able to work—About 6 weeks for full time. Partial duties, supervising, June 24. Permanent disability—Undetermined."

Mr. Horton returned to work on June **24, 1944.** The fractures did not heal and he was admitted to the John C. Proctor Hospital on July **21, 1944.** At that time, Dr. Burhans operated on the hand, fastening the metacarpal bone ends together with steel wire. Following the operation, the claimant again returned to work on July **31, 1944.**

Dr. Burhans, on May **26, 1945,** sent the following report to the Division of Highways:

"Nature of Injury—Contusion chest—fracture 4th and 5th metacarpal bones of right hand. Crushing injuries. Treatment—5th metacarpal didn't heal with first application of cast. Second time open reductions were done, and fixation of 5th metacarpal with steel wire. Cast applied. X-ray showed 5th metacarpal was not healed. July 21, 1944, second cast applied. Permanent disability—50% loss of flexion of 1st, 2nd, 3rd, and 4th fingers, right hand; 25% loss of extension of 3rd and 4th fingers. This is permanent. He will have about 50% loss of use of the entire hand. I believe this to be permanent."

Claimant was paid compensation for the periods, June **17** to **23,** and July 21 to **30, 1944,** inclusive, at the rate of $150.00 per month, totaling the sum of **$83.39.** In addition thereto, the respondent has paid the following creditors in connection with the claimant's injuries: Dr. Burhans, **$124.00;** St. Francis Hospital, **$40.75;** and John C. Proctor Hospital, **$70.00.**

The record further discloses that the claimant had been employed by the Division of Highways for more than one year prior to the accident and had earned **$1792.50;** that, at the time of the injury, he was **53** years

of age, married, but had no children under 16 years of age dependent upon him for support.

From the medical reports filed herein, we conclude that claimant has suffered a 50% permanent loss of use of his right hand.

After full consideration of the record, the Court finds that claimant and respondent were, on the 16th day of June 1944, operating under the provision of the Workmen's Compensation Act; that on the date last above mentioned, claimant sustained accidental injuries which did arise out of and in the course of the employment; that notice of said accident was given said respondent and claim for compensation on account thereof was made on said respondent within the time required under Section 24 of the Act. That the earnings of the claimant for the year next preceding the injury were $1792.50 and the average weekly wage was $34.47; that the claimant at the time of injury had no children under the age of 16 years; that all medical, hospital, and other expenses incurred by reason of said injury have been paid by the respondent.

We further find that claimant was entitled to receive temporary total compensation for a period of ten days at the rate of $17.63 per week, or a total sum of $25.19. However, the record discloses that claimant was paid by the respondent the sum of $83.39 for unproductive time, which is an overpayment of temporary total compensation of $58.20.

As claimant has suffered a 50% loss of use of his right hand, he is entitled to receive under Section 8, Paragraph (e), Sub-paragraph (12) and also Sub-paragraph (17) of the Workmen's Compensation Act, 50% of his average weekly wage for a period of 85 weeks. Claimant's compensation rate, as based on his annual earnings,

is **$17.63** per week, inasmuch as he has no children under **16** years of age dependent upon him for support. Eighty-five times **$17.63** is the sum of **$1498.55,** from which must be deducted the sum of $58.20, heretofore paid to claimant for unproductive time, leaving a balance due claimant of **$1440.35.**

An award is therefore entered in favor of claimant in the sum of fourteen hundred forty dollars and thirty-five cents **($1440.35),** all of which has accrued and is payable in a lump sum.

This award is subject to the approval of the Governor, as provided in Section **3** of "An Act concerning the 'payment of compensation awards to State employees.''

(No. 3928—Claimant awarded $408.97.)

CHARLES **TOMSOVIC,** Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 19, 1946.

LEONARD W. STEARNS, for claimant.

GEORGE F. BARRETT, Attorney General; WILLIAM L. MORGAN, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*attendant at Illinois State Hospital,* **Mxon,** *Illinois within provisions of—when an award may be made* under. Where it appears that an attendant at Illinois State Hospital, while trying to restrain a patient from breaking a window in the hospital, sustained an injury which resulted in a 75% permanent partial loss of the use of the second finger of his right hand, an award therefor may be made under the Workmen's Compensation Act upon compliance with the requirements thereof.

ECKERT, **J.**

On June **6, 1945,** the claimant, Charles Tomsovie, employed by the respondent as an attendant at the Illinois State Hospital, at Dixon, Illinois, sustained an injury to the second finger of his right hand when he tried to re-

strain one of the patients from breaking **a** window in the hospital.

At the time of the injury claimant had no children under sixteen years of age dependent upon him for support and was employed at a monthly salary of $115.00. Claimant and respondent were operating under the provisions of the Workman's Compensation Act of this State, and notice of the accident and claim for compensation were made within the time provided by the Act. The accident arose out of and in the course of the employment.

From the report of the Department **of** Public Welfare, which forms a part of the record in the case, it appears that claimant's injury resulted in a fracture of his finger, and that an X-ray shows a tiny splinter of bone on top of the distal inter-phalangeal joint. It also appears from this report that claimant lost no time from his work.

Claimant, testifying on his own behalf, stated that the splint placed on his finger following the accident, under the supervision of Dr. Rosenberg, at the Illinois State Hospital at Dixon, remained there for four or five weeks. After the splint was removed, the finger was deformed, bending inward, and claimant was unable to extend it fully. He testified that he has no strength in the finger; that it still pains him; and that he is unable to use it in any manual work.

No claim is made for medical or surgical services, or for temporary disability. Claimant, however, seeks compensation for loss of use of his right second finger.

From the evidence, and from personal examination of the claimant by the court, it appears that the claimant has sustained a 75% permanent partial loss of the use of the second finger of his right hand. For the loss of a

second finger, or the permanent and complete loss of its use, claimant would be entitled to **50%** of his average weekly wage for thirty-five weeks. Since he has suffered a **75%** loss of the use, he is entitled to an award of 50% of his average weekly wage for **26¼** weeks. His annual earnings were **$1380.00,** his average weekly wage was **$26.53,** one-half of which is **$13.26.** The injury having occurred after July **1, 1943,** this must be increased **17½%.** Claimant's compensation rate is thus **$13.53** per week.

Claimant is therefore entitled to an award of **$15.58** per week for a period of **26¼** weeks, in the total sum of **$408.97,** which has accrued and is payable forthwith.

This award is subject to the approval of the Governor, as provided in Section **3 of** "An Act concerning the payment of compensation awards to State employees," and is payable upon approval, from the appropriation from the General Revenue Fund in the manner provided in such act.

(No. 3935—Claimant awarded $189.39.)

THE TEXAS COMPANY, A DELAWARE CORPORATION, **Claimant,** *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 19, 1946.

HAROLD K. NORTON AND EDWARD R. CULLEN, **for** claimant.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

SUPPLIES—*lapse of appropriation before payment—sufficient unexpended balance in—when award may be made for value of.* **Where merchandise is sold to the State on its order and received by it and claimant submits a bill in the correct amount therefor within a reasonable time, and due to** no **fault or negligence on his part, same is not approved and vouchered for payment before lapse of appropriation from**

which it is payable, an award may be made for the value thereof, where at the time same was furnished there were sufficient funds remaining therein to pay same.

DAMRON, J.

The above named claimant filed this complaint on October **31, 1945,** seeking an award for petroleum products furnished by it to various departments of the respondent.

The record consists of the complaint, departmental report, stipulation and waiver of brief and argument on behalf of claimant and respondent.

The complaint alleges that on June **29, 1944** the Division of Purchases and Supplies of the Department of Finance, State of Illinois, through Walter R. Youngberg, State Purchasing Agent, issued to the claimant an invitation for bids for the supplying of gasoline, kerosene, liquid fuels, oils, ahd lubricants; that claimant on July 10, **1944,** responsive to said invitation for bids, filed quotations for the supplying of said products with respondent; and that on August 8, **1944,** Purchase Order Number D **124340,** issued from said Department of Finance, Division of Purchases and Supplies for the State of Illinois, for shipment to the Division of Highways during the period beginning with the date of said order and ending June **30, 1945,** for gasoline, motor oils, transmission and gear lubricants, and grease lubricants, at quoted prices and in amounts to be from time to time specified. A copy of said purchase order was attached to and made a part of the complaint.

That the Division of Highways during the period of August **8, 1944** to June **30, 1945,** ordered from the claimant under said Purchase Order Number D **124340** various quantities and amounts of gasoline, motor oils, transmission and gear lubricants, and grease lubricants, at

various times and places, and claimant delivered said quantities and amounts of petroleum products at said times and places to duly authorized representatives of said Division of Highways.

That the agreed price for the products ordered and delivered as aforesaid was **$189.39;** that claimant has not received payment for said deliveries, either in whole or in part, and that claimant has not presented said claim to any State department or officer thereof, or to any person, corporation, or tribunal for the reason that the items comprising the said claim were brought to claimant's attention subsequent to September **30, 1945,** the last day on which payment of claims could have been made under the appropriation established for said purposes.

That there remains due and owing to claimant from the Division **of** Highways of the State of Illinois, the sum of **$189.39,** and that no third person or corporation has any interest in said claim.

The report of the Division of Highways acknowledges receipt of sixty-nine **(69)** separate purchases of gasoline, oil, kerosene, grease and small parts from the claimant, divided as follows: Public Works and Buildings, **43;** Public Safety, 20; Registration and Education, **3;** Conservation, **2;** and Public Health, 1. It further recites that each of the several departments affected have confirmed that the purchases assigned to them had been made; that the purchases conform in all respects to the conditions and requirements set out in the aforesaid purchase order'contract entered into between the State and claimant; that the volumes of materials were received and used by the individual person shown and in equipment owned and controlled by the department in which he is employed, and that the prices shown axe in

accord with the contract agreement. It further shows that appropriations were in effect and funds available in them to pay claimant's accounts and had they been scheduled in proper time and had the invoices been brought to claimant's attention before September **30, 1945,** they could have been vouchered and paid by the State in the regular course of business. Not having been presented in time, the appropriation lapsed.

We have repeatedly held where claimant has rendered services to the State on the order of one authorized to contract for it, and submits a bill therefor within a'reasonable time and due to no fault or negligence on the part of claimant, same is not approved and vouchered for payment, before the lapse of the appropriation from which it is payable, an award for the reasonable value of same may be made, where at the time the services were rendered there were sufficient funds remaining therein to pay same. *Rock Island Sand & Gravel Company* vs. *State, 8* C. C. R. **165;** *Oak Park Hospital Inc.* vs. *State,* **11** C. C. R. **219,** and cases cited thereunder.

This case comes within the rule above set forth. An award is therefore entered in favor of the claimant for the sum of One Hundred Eighty-nine Dollars and Thirty-nine Cents **($189.39).**

(No. 3948—Claimant awarded $100.20.)

ILLINOIS BELL TELEPHONE COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 19, 1946.

BEN B. BOYNTON, for claimant.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

SERVICES—*lapse* of appropriation before *payment—sufficient* unexpended balance *in—when* award may be made *for* value *of.* Where merchandise is sold to the State on its order and received by it and claimant submits a bill in the correct amount therefor Within a reasonable time, and due to no fault or negligence on his part, same is not approved and vouchered for payment before lapse of appropriation from which it is payable, an award may be made for the value thereof, where at the time same was furnished there were sufficient funds remaining therein to pay same.

ECKERT, J.

During the months of April, May and June, **1945,** claimant, Illinois Bell Telephone Company, furnished telephone service at its Blue Island Exchange to the Department of Public Works and Buildings, Division **of** Highways, of the State of Illinois, pursuant to contract. Claimant's charge for these services was $100.20 which has not been paid.

The regular monthly statements for these services were promptly mailed **by** [claimant to the respondent, but were misplaced in the office of the Division of Highways, so that the Division of Highways failed to submit statements to its general office until after September 30, **1945.** The claim being for services furnished prior to July **1, 1945,** during the 63rd biennium, it could not be paid after September **30, 1945.** Sufficient funds remained in the appropriation for payment.

Where a claimant has performed services for the respondent in accordance with a duly authorized contract, has submitted its statement of costs and charges to the respondent within reasonable time, and has not received payment, and where such non-payment is due to no fault on the part of the claimant, there remaining **a** sufficient unexpended balance in the appropriations from which payment could have been made, the claimant is entitled to an award. *(Rock Island Sand and Gravel Company* vs. *State of Illinois, 8* C. **C.** R. 165; *Elgin, Joliet'*

and Eastern Railway Company vs. *State* of *Illinois*, 10 **C. C.** R. **243;** *City* of *Kankakee* vs. *State* of *Illinois*, **12 C. C.** R. **393.)**

An award is therefore entered in favor of the claimant in the sum of $100.20.

(No. 3708—Claimant awarded $782.23.)

ROSS BARTHOLOMEW, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1946.

LOUIS F. KNOBLOCK, for claimant.

GEORGE F. BARRETT, Attorney General; C. **ARTHUR** NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S *COMPENSATION* ACT—*attendant at Peoria State Hospital within provisions of—Act* **is** ***not*** *limited in* ***its*** *application to healthy* ***employees—injuries*** *which* ***aggravate a*** *diseased condition are compensable.* Where it appears that an attendant at Peoria State Hospital, while in the course of his duties, attempted to restrain a patient and in the altercation that ensued he slipped and sustained an injury to his right leg and knee, which **because** of a previous arthritic condition resulted in a permanent and partial loss of use of his right leg—to the extent of 33% per cent, an award may be made therefor under the provisions of the Workmen's Compensation Act. It is well settled that the Workmen's Compensation Act is not limited in its application to healthy employees.

EVIDENCE—*where* ***medical*** *testimony sufficient to overcome the prima facie evidence of departmental report.* Where medical testimony is derived from a personal examination of the claimant and thd same is not contradicted by any evidence in the case other than the departmental report—it meets the essential statutory and legal evidentiary requirements sufficient to overcome the ***prima*** *facie* evidence of the departmental report.

EVIDENCE—***when*** *department reports* admissible—Rule **16** provides that all records and files maintained in the regular course of business by any State department, commission, board or agency of the respondent, and *all departmental reports* ***made by*** *any officer thereof* concerning any *matter* ***or*** *case pending Before the* ***Court*** shall be *prima facie* evidence of the facts set forth therein. But same may be overcome by other evidence. ***To*** hold otherwise, where there is other competent evidence to the contrary, would, in effect, confer the power and jurisdiction of this Court on the author of the report.

FISHER, C. J.

This claim was filed April 21, 1942. Testimony on behalf of the claimant was taken in October 1942 and was filed on January 7, 1946 after a second rule was entered on November 13, 1945 to show cause why the case should not be dismissed for want of prosecution.

The Record consists of the Complaint, Transcript of the testimony on behalf of claimant, Departmental Report, and Statement, Brief and Argument for Claimant and Respondent by respective counsel.

On October 26, 1941 claimant, Ross Bartholomew, was employed as an attendant at the Peoria State Hospital at Bartonville, Illinois. On the evening of that day, while supervising a detail of patients handling coal at the power plant of the hospital, claimant attempted to restrain a patient who tried to leave the group, and in the altercation that ensued he slipped on some loose coal, thereby sustaining an injury to his right leg and knee.

The incident and injury were immediately reported to a member of the hospital staff. Claimant was hospitalized the next day and remained in the hospital until December 11, 1941.

Claimant was employed at a salary of $63.00 per month plus maintenance valued at $24.00 per month, or a total of $1,044.00 per annum. His average weekly wage was $20.07, and his compensation rate (one-half the average weekly wage increased by 10%) would be $11.03 per week: He was paid one month's salary during his disability and furnished maintenance for six months and five days, from October 26, 1941 to April 30, 1942. This represents the total sum of $211.00.

Respondent and [claimant were operating under the provisions of the Workmen's Compensation Act, and the accident arose out of and in the course of the employ-

ment. . No jurisdictional questions are involved.

The' only question presented for determination is, whether claimant is entitled to any award for the permanent partial loss of use of his right leg, and if so, to what extent. The record in this respect consists only of the testimony of the claimant, Dr. William J. Roche in his behalf, and the departmental report.

The Departmental Report was filed on July 29, 1942 and is signed by Dr. J. H. Ellingsworth, Managing Officer of the hospital. The report discloses that the accident was sustained by claimant as above described. Paragraphs 5 and 6 of the report concerning claimant's injuries state: "The injury * * * was classified as mild in type. X-ray of the right knee revealed an old arthritic deformans. * * * The injury would not have disabled a sound man more than a few days. * * * He is disabled because of the old arthritis. * * * This physical disability with the fact of his age, sixty-seven (67) years, renders him incapable of the work of an attendant at the Peoria State Hospital in the supervision and care of patients, some of whom are young and active.''

Other than this report, no evidence was presented on behalf of respondent.

The claimant, testifying in his own behalf, stated he was 67 years of age, married and had no children under sixteen years of age. For many years previous to the accident on October 26, 1941 he had no difficulty with his leg from arthritis, or from any other cause. On the evening of the accident he was given a sedative which furnished him little relief from the pain. His leg swelled and turned black and blue. His knee enlarged to twice its normal size. His knee is still weak, he tires easily, and it is difficultfor him to get up and down. He cannot

walk as he did prior to the accident and requires a cane for support. He cannot raise himself without support. He returned to regular employment in July 1942 when he secured work in an orchard. Prior to that he did some gardening a couple of hours from time to time. The evidence indicates that he was temporarily disabled from the date of the accident until May 1, 1942.

On cross examination claimant admitted that he had an accident in April 1935 which tore a muscle in his left knee which confined him to the hospital for seven weeks and required an operation. He also sustained an injury to his right leg in 1897 while playing baseball and although painful for three or four days the Condition cleared and caused no further discomfort. In January 1941 his right shoulder was injured during an altercation with a patient when he was thrown to the cement floor.

Dr. Roche testified that he examined claimant on April 1, 1942 and found the quadriceps femoris tendon of the right leg detached from the knee cap; extensor motion was accomplished only by the vastus externus tendons and internus tendons. In his opinion, this condition of the leg was the result of trauma and will be permanent and will impair the stability of the knee and extension of the knee joint. He testified to a loss of two-thirds of motion because of a lack of muscular power required to stabilize the knee in walking or standing. In answer to a hypothetical question incorporating the facts relating to the previous injuries, as well as the circumstances relating to the present claim, he expressed the opinion that there was a causal connection between the accident and the present condition in the right knee. No objection was taken to any of this testimony.

On cross-examination Dr. Roche expressed the opinion that the arthritic deformans condition would not "play any part in the picture."

On this state of the record respondent contends that under Rule 16 the Departmental Report constituted *prima facie* evidence of the facts stated therein and clearly shows that claimant has no disability resulting from the accidental injury, and that his disability, if any, was caused by arthritis.

Respondent further argues that the testimony of Dr. Roche was partially based upon the history of the case as given to him by the claimant and was not based wholly upon objective findings, and therefore is incompetent and cannot avail claimant in sustaining the burden of proof which rests upon him to establish his claim by a preponderance of the evidence.

Claimant, in opposition to these contentions, asserts that the Departmental Report cannot be regarded as *prima facie* evidence as provided in Rule 16 because it was not prepared until after the complaint herein was filed, and hence, is not a report made or maintained by' the state in the regular course of business. Claimant insists that construction of Rule **16** to the contrary would violate the spirit and purpose of the statute creating the Court of Claims.

Claimant further contends that Dr. Roche's testimony is not incompetent as contended by respondent.

Claimant's argument as to the admissibility and competency of the Departmental Report is dispelled by the clear provisions of Rule **16.** Rule **16** provides that "all records and files maintained in the regular course of business by any state department, commission, board, or agency of the respondent *and all departmental reports made by* my *officer thereof relating to any matter or case pending before the Court* shall be *prima facie* evidence of the facts set forth therein, * * *."

The objection to the report on the ground that it

was filed after the complaint was filed herein, or for the purpose of defending a claim is without merit in view of that part of the rule which we have emphasized by italics. The construction urged by the claimant of Rule 16 is one that would preclude the parties from availing themselves of *prima facie* evidence which is frequently of material aid to this Court in hearing and properly determining claims filed with it.

On the other hand, such reports are only *prima facie* evidence of the facts contained therein, and it is the province of this court to distinguish between facts and mere conclusions, and also to determine whether such *prima facie* evidence has or has not been overcome by other evidence. To hold otherwise, where there is other competent evidence to the contrary, would, in effect, confer the power and jurisdiction of this Court on the author of the report.

The contention of respondent that claimant's disability was caused by arthritis and his age, rather than an accidental injury, finds its only support in the Departmental Report. This report, among other things, states that "this physical disability with the fact of his age, 67 years, renders him incapable of the work at the Peoria State Hospital in the supervision and care of patients, some of whom are young and active.'' The rather obvious comment in reply to this statement is that the claimant was regularly employed as an attendant at the hospital prior to the date he received his injury. It is not contradicted that previous thereto he had never experienced any physical disability which interfered with the satisfactory discharge of his duties.

In *Muir* v. *State*, 14 C. C. R. 191, at page 196, we quoted the principle which is applicable to this aspect

of the case from *Marsh* v. *Ind. Com.*, 386 Ill. 11, where it said:

"It is well settled that the Workmen's Compensation Act is not limited in its application to healthy employees. Where one sustains an accidental injury which aggravates a diseased condition or where, in the performance of his duties and as a result thereof, he is suddenly disabled, an accidental injury is sustained even though the result would not have obtained had the employee been in normal health."

In *Powers Storage* Co. v. *Ind. Com.*, 340 Ill. 498, at 504, the Court stated:

"His employer accepted him as an employee in the physical condition in which he was and is liable for any accidental injury occurring to him arising out of and in the course of his employment. (*Jones Foundry* Co. v. *Ind. Com.*, 303 Ill. 410.)

The contention of the respondent with respect to the competency of Dr. Roche's testimony cannot be sustained.

We recognize that Section 8 (i) of the Workmen's Compensation Act provides that an award can only be made for such injuries as are proven by competent evidence, of which there are, or have been objective conditions or symptoms proven not within the physical or mental control of the injured employee himself. Dr. Roche's testimony, derived from his personal examination, was that there was an impaired function of the right leg, and claimant also testified as to his inability to use his leg in a practical or normal manner as he could prior to the accident, which is not contradicted by any evidence in the case other than the report. This testimony, when considered in connection with all the evidence, in our opinion, meets the essential statutory and legal evidentiary requirements sufficient to overcome the *prima facie* evidence of the Departmental Report. *Heed* v. *Ind. Com.*, 287 Ill. 505, 508.

From a careful consideration of all the evidence, it would appear to the Court that a reasonable conclusion

would be that claimant has sustained a permanent and partial loss of use of his right leg to the extent of thirty-three and one-third (33 1/3) per cent. For this permanent partial loss claimant is entitled to $698.57, computed at the rate of $11.03 for 63 1J3 weeks.

Claimant!, as shown by the record, suffered a temporary disability for a period of six months and five days, from October 26, 1941 to May 1, 1942. At his rate of compensation of $11.03 he was entitled to $294.66. He received salary and maintenance representing the sum of $211.00 during this period, and we find that he is entitled to an award for temporary disability for the differential of $83.66.

An award is therefore entered in favor of claimant, Ross Bartholomew, in the sum of Seven Hundred Eighty-two and 23/100 Dollars ($722.23), all of which is accrued and is payable forthwith.

This award is subject to the approval of the Gover-. nor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 3839—Claimant awarded $412.50.)

GENE YORTON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1946.

LOUIS F. KNOBLOCK, for claimant.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General,, for respondent.

WORKMEN'S COMPENSATION ACT—*employee in Department of Public Welfare, Division, Peoria State Hospital, within provision of—when an award may be made under.* **Where it appears that claimant, an employee of the Department of Public Welfare Division, Peoria State Hospital, while in the course of his employment, and while operating power driven machinery, sustains injuries resulting in the entire loss of use of the third finger of his left hand; an award therefor may be**

made under the Workmen's Compensation Act upon compliance with the requirements thereof.

FISHER, C." **J.**

Claimant was in the employ of respondent in the Department of Public Welfare, Division, Peoria State Hospital, on the 29th day of March, **1943** as a machinist.

In the operation of power driven machinery on said date claimant suffered an injury to his left hand, and seeks an award under the provisions of the Workmen's Compensation Act for the entire loss of use of the hand.

The record of the case consists of the Complaint filed March 25, **1944,** Departmental Report filed April **17, 1944,** Order to Show Cause why claim should not be dismissed for want of prosecution entered January 8, **1946,** Motion of Claimant for Extension of Same filed January **8,1946,** Affidavit in Response to Order to Show Cause filed January **8,1946,** Transcript of Evidence filed March 28, **1946,** Waiver of Brief of Claimant filed April **26, 1946** and Waiver of Brief of Respondent filed April **30, 1946.**

The evidence discloses that claimant, as a result of the said injury, suffered the entire loss of use of the third-finger of his left hand, but the evidence does not show any other injury to, or the loss of, use of the hand.

No jurisdictional questions are involved, and the claim was filed in apt time. Claimant was injured in the course and within the scope of his employment, and is entitled to the benefits of the Workmen's Compensation Act for the injury sustained.

Claimant was employed at a wage rate of $1.27½ per hour. His compensation rate is **$16.50** per week. **For** the loss of a third finger claimant is entitled to receive $16.50 per week for a period of twenty-five (25) weeks.

The Workmen's Compensation Act, (section 8—E 4 and L).

An award is therefore entered in favor of claimant, Gene Yorton, in the sum of Four Hundred Twelve and 50/100 Dollars ($412.50), all of which is accrued and payable forthwith.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 3840—Claimant awarded $273.05.)

SELMA JOHNSON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1946.

GEORGE D. CARBERY, for claimant.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

ST. CHARLES INDUSTRIAL SCHOOL FOR BOYS—*when State liable for payment* of *damages to property caused by escaped inmates.* Where it appears that two boys who escaped from the St. Charles Industrial School for Boys stole an automobile and subsequently became involved in an accident, causing considerable damage to said automobile, and the provision of Chapter 23, Section 372 (a), Illinois Revised Statutes, have been compiled with, an award may be made for the amount of damages sustained and proved.

DAMRON, J.

This is a claim for damages to an automobile, filed by the above named claimant as owner of said car, under the provisions of "An Act concerning damages caused by escaped inmates of charitable institutions over which the State has control." (Chapter 23, Section 372a, Illinois Revised Statute 1943).

It is stipulated, by and between claimant and re-spondent through their respective attorneys, that the report of the Department of Public Welfare, bearing the

date of May 4, 1944, and a subsequent report and recommendation of the Department of Public Welfare, dated November 23, 1945, shall constitute the record in this case.

These reports, taken together, show that on July 13, 1943, two boys escaped from the St. Charles Industrial School for Boys, made their way to Geneva, Kane County, Illinois, and there stole the 1934 Pontiac automobile belonging to the claimant, drove the car to the City of Chicago and there became involved in an accident causing considerable damage to claimant's automobile.

The reports further divulge that these boys were apprehended by State authorities and confessed to the theft of this automobile and acknowledged that they had been involved in the accident in Chicago as aforesaid.

The record further shows that this automobile, at the time of the taking by escapees as aforesaid, was in good running order. Attached to the complaint and also incorporated in the report of the Department of Public Welfare, is an estimate of the Tri-City Garage of Geneva, Illinois, showing the fair and reasonable costs of parts and the labor required to place said car in good running order, amounting to the sum of $273.05.

This record, as submitted to this Court, substantially complies with the provisions of the statute and we find, therefore, that claimant is entitled to be reimbursed for the damages to her automobile. *Carls* vs. *State*, *3904, rendered November 1945 term.*

An award is therefore entered in favor of Selma Johnson, the claimant, in the sum of Two Hundred Seventy-three Dollars and Five Cents ($273.05).

(No. 3858—Claimant awarded $190.85.)

MARTHA HOLTZMAN, **Claimant,** *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1946.

CLAIMANT, pro se.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*employee of the Department of Public Welfare, and the Illinois Industrial Home for Blind, Chicago, within provisions of—when an award may be made* for medical care. Where it appears that claimant while in the course of her employment at the Illinois Industrial Home for Blind, sustained injuries which necessitated her removal to a hospital and the medical expenses were incurred under the direction of the Chief Clerk of said institution, an award therefor may be made under the Workmen's Compensation Act.

ECKERT, J.

On April 5,1944, the claimant, Martha Holtzman, an employee of the respondent, in the Department of Public Welfare, at the Illinois Industrial Home for the Blind, in Chicago, while removing laundry from a top rack of shelves in the institution, fell from a stool onto the cement floor and injured her head and back. Immediately following the accident, she was removed to St. Mary of Nazareth Hospital, where she was hospitalized until April 17,1944. She returned to work a week later.

At the time of the accident, claimant and respondent were operating under the provisions of the Workmen's Compensation Act of this state, and notice of the accident and claim for compensation were made within the time provided by the act. The accident arose out of and in the course of the employment.

Claimant incurred a hospital bill at St. Mary of Nazareth Hospital in the amount of $120.05, incurred a charge of $15.00 for ambulance services furnished by the Cassidy Ambulance Service, and incurred a charge of

$42.00 for medical services rendered by Dr. Henry **J.** Niemeyer. All of these charges remain unpaid, and were incurred by the claimant under the direction of the Chief Clerk at the institution. No claim is made for temporary or permanent incapacity, but claim is made for payment *of* the expenses incurred **for** hospital, ambulance, and medical services.

A. M. Rothbart & Associates were employed to **take** and transcribe the evidence at a hearing before Commissioner East, on **April 24,1946.** Charges in the amount of **$13.80** were incurred for these services, which charges are fair, reasonable, and customary.

Claimant is entitled to an award in the total amount of **$190.85,** payable forthwith.

Award is accordingly entered as follows:

For the use of St. Mary of Nazareth Hospital..	**$120.05**
For the use of Cassidy Ambulance Service.	15.00
For the use of Dr. **Henry** J. Niemeyer..	**42.00**
For the use of A. M. Rothbart & Associates..	13.80

This award is subject to the approval of the Governor as provided in Section **3** of **"An** Act concerning the payment of compensation awards to State employees."

(No. 3911—Claimant awarded **$536.76.)**

THOMAS **KENNING,** Claimant, *vs.* **STATE OF ILLINOIS,** Respondent.
***Opinion** filed May 14, 1946.*

C. EVERETT SMITH, for claimant,

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S *COMPENSATION* ACT—*attendant at the Lincoln State School and Colony within provisions of—when an award may be made under.* Where it appears that an attendant at the Lincoln State School and Colony while in the course of his employment, suffers a fractured **Anger** *of* the left hand in his efforts to subdue a patient and the injury

results in a 90% permanent loss of use of said finger, an award may be made therefor under Section 8, paragraph (e) and (1) of the Workmen's Compensation Act upon compliance with the requirements thereof.

DAMRON, J.

This is a claim for benefits under the Workmen's Compensation Act.

On the 7th day of November 1944, this claimant, while in the performance of his duties as an attendant at the Lincoln State School and Colony, received an injury to his index finger of the left hand while attempting to subdue a patient.

That, as a result of said injury, the index finger of the left hand was fractured.

The evidence discloses that claimant was given immediate medical attention, the index finger was placed in a cast for six weeks thereafter. Therapy treatment was used and at the time of the taking of the testimony, on the 29th day of November **1945,** according to the medical testimony, claimant had but **5** degrees use in the mid-phalanx and about **10** degrees use in the phalanx metacarpal. The distal joint had about **2** degrees use. The physician, called on behalf of claimant, testified that due to this injury, claimant's left hand was smaller due to non-use.

After full consideration of this record, which consists of the complaint, departmental report and transcript of evidence, it appears that at the time of the injury in question, the claimant and respondent were operating under the provisions of the Workmen's Compensation Act and notice of the accident and claim for compensation were made within the time provided in Section 24 of said Act, and that the injury arose out of, and in the course of, claimant's employment.

It also appears, from the record, that, claimant is not entitled to an award on account of temporary total disability, he having lost no actual time due to his injury and his salary was paid to him without interruption?

It further appears from the record, that the annual wages of claimant for one year next preceding the date of the accident, were $1320.00; his average weekly wage, therefore, amounts to **$25.38,** his weekly compensation rate is **$14.91.**

It also appears from the record that this claimant has suffered a **90%** permanent loss of use of the index finger of his left hand. Under the provisions of Section 8, Paragraphs (e), and (1) of the Workmen's Compensation Act, as amended, claimant is entitled to 50% of his average weekly wage for a period of **36** weeks or the sum of **$536.76.** It further appears from the record that all medical and hospital services have been furnished by the respondent.

An award is therefore entered in favor of the claimant, Thomas Kenning, for the sum of Five Hundred Thirty-Six Dollars and Seventy-Six Cents **($536.76)** all of which has accrued and is payable forthwith.

This award is subject to the approval of the Governor as provided in Section **3** of, "An Act concerning the payment of compensation awards to State employees."

(No. 3921—Claim denied.)

DR. LOTTIE LANDE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.
Opinion filed May 14, 1946.

CLAIMANT, pro se.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*when claim for compensation will be denied.* **Where claimant fails to show that jaundice, which is otherwise not necessarily an occupational disease, followed as an incident of an occupational disease as defined in the Workmen's Occupational Diseases Act (Ill. Rev. Stat. 1941, Chapter 48, par. 172.6) and that said disease or illness was contracted as a result of the negligence of the State, the claim will be denied.**

DAMRON, J.

The above named claimant on July **19,1945,** filed her complaint pro se, seeking an award under the Occupational Diseases Act.

The matter comes up at this time on motion of the Attorney General to dismiss the complaint.

The complaint alleges that claimant was employed by respondent at the Dixon State Hdspital and that on **April** 18, 1945, she contracted a disease **known** as jaundice and suffered therefrom from April **18** to April **20** inclusive. This disease recurred April **24** and she suffered therefrom to May **1;** a second recurrence was on May 9. She was treated for this disease and returned to her employment on July **31,1945.** She seeks an award for salary during the time of her disability from May 10 to July **31** inclusive and certain hospital bills.

It is the contention of the Attorney General that the respondent has never elected to come within the provisions of the Workmen's Occupational Diseases Act and therefore the only liability of the respondent which can exist under any circumstances, is under Section **3** of said Act, and further that inasmuch as the complaint does not charge negligence by the employer or charge that claimant is suffering from an occupational disease contracted during the course of her employment, her claim should be dismissed.

Jaundice is not an occupational disease, it is an ordinary disease of life to which the general public is exposed

outside of the employment and is not compensable except where said disease follows as an incident of an occupational disease as defined in the Workmen's Occupational Diseases Act. *Ill. Rev. Stat.* **1941,** Chap: 48 par. **172.6.**

To justify an award under Section **3** of the Act, claimant must not only show that she sustained an injury to her health by reason of an occupational disease or illness contracted and sustained in the course of her employment, but it must also be clearly shown that the said disease or illness was contracted as the result of the negligence of the State. *Domke* vs. *State,* 12 C. C. R. **451.**

This complaint fails to state a case; therefore, the motion of the Attorney General must be allowed.

Complaint dismissed.

(No. 3931—Claimant awarded $35.50.)

CHIEF MCCLAIN, OTHERWISE KNOWN AS B. T. MCCLAIN, Claimant, *vs.* STATE OF **ILLINOIS,** Respondent.

Opinion filed** May **14, 1946.

PFEIFER, FIXMER & GASAWAY, for claimant.

GEORGE F. **BARRETT,** Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*when* an *award for* medical *services* may be ***made under.*** Where it appears that **a** watchman of Capitol Building sustains injuries to his back, while in the course of his duties, and medical aid is rendered to the claimant at the direction of the Secretary of State, an award therefor may be made under the Workmen's Compensation Act upon compliance with the requirements thereof.

ECKERT, *J.*

On **April 23,** 1945 the Claimant, Chief McClain, who is otherwise known as B. T. McClain, while in the performance of his duties as a watchman at the south door

of the Capitol Building, in Springfield, to clear the entrance to the building, attempted to move a heavy box. His hand slipped and he fell against the stone wall of the building; sustaining an injury to his back.

At the direction of Edward J. Barrett, Secretary of State, by whom claimant, was employed, he was treated for his injuries by Dr. H. H. Southwick, of Springfield, and an X-ray was taken, and an intravenous injection was given claimant at St. John's Hospital, Springfield. Claimant paid Dr. Southwick for his services the sum of $25.00, and paid St. John's Hospital for its services the sum of $10.50. Claim, in the total amount of $35.50, is made for reimbursement for payment of these two items.

At the time of the accident, the employer and employee were operating under the provisions of the Workmen's Compensation Act of this state, and notice of the accident and claim for compensation were made within the time provided by the act. The accident arose out of and in the course of claiman's employment.

Claiman is therefore entitled to an award of $35.50, reimbursement for medical and hospital services. The award is payable forthwith.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 3937—Claimant awarded $5,340.00.)

ANNA HUIZENGA, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

***Opinion filed** May 14, 1946.*

CLAIMANT, pro se.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*employee* **of** *the Department of* Public *Works and Buildings, Division* **of** *Highways within provisions of-when award may be made under—to deceased employee's* widow *and dependent child.* Where it appears that an employee of the Division of Highways while operating a mower, which overturned, crushing his chest and body, inflicting fatal injuries from which he died shortly thereafter, an award may be made therefor to his dependent widow and 'child, who was under sixteen years of age at the time of his death, under Section 7 (h), 3 and 7 (k) of the Workmen's Compensation Act upon compliance with the requirements thereof.

FISHER, C. J.

On the 17th day of September, 1945, Peter D. Huizenga, deceased husband of claimant, was an employee **of** the State of Illinois, Department of Public Works and Buildings, Division of Highways. He was employed as a maintenance laborer, and his duties were to mow vegetation along the State Highways.

On September 17, **1945** the said Peter D. Huizenga was operating a power driven mower for the Division of Highways. He was required to operate the mower on all types of slopes found along highways. That afternoon, while operating the mower along a steep embankment on State Highway No. 80, about 2.5 miles southwesterly from Albany, in Rock Island County, the mower overturned, pinning Mr. Huizenga beneath the machine, crushing his chest and body and inflicting fatal injuries from which he died immediately or shortly thereafter.

The deceased left him surviving, and totally dependent upon his earnings for support, his widow, who is the claimant herein, and one child under the age of 16 years at the time of his death.

Claimant seeks an award under the provisions of the Workmen's Compensation Act of Illinois for the death of her husband.

The record of this case consists of the Statement of Claim, Report of the Division of Highways, and Oral

Waiver in open Court of Statement, Brief and Argument by respondent.

The claim is fully sustained by the Report of the Division of Highways. The deceased came to his death as a result of injuries he received while in the performance of duties for which he was employed, and claimant is entitled to the benefits she seeks.

Decedent's rate of pay was $.75 per hour, and employees engaged in a similar capacity work less than **200** days per year. 8 hours constitutes a normal ,working day.

Claimant is entitled to have and receive from respondent the sum of Five Thousand Three Hundred Forty Dollars **($5,340.00)** (Section **7** (h), **3** and **7** (k).

An award is entered in favor **of** claimant, **Anna** Huizenga, in the sum of **$5,340.00,** payable as follows:

$ 516.12, which is accrued and payable forthwith:
$4,823.88, payable in weekly installments of $15.18 each, beginning May 20, 1946.

This award is subject to the approval of the Governor, as provided in Section **3** of "an Act concerning **the** payment of compensation awards to State employees."

(No. 3940—Claimant awarded $560.94.)

JOSEPH WINGEL, Claimant, *vs.* STATE **OF** ILLINOIS, Respondent.

Opinion filed May 14, 1946.

HAROLD T. BERC, for claimant.

GEORGE E'. BARRETT, Attorney General; **WILLIAM** L. MORGAN, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*attendant at Elgin State* Hospital *within provisions of—when an award may be made* under. Where it appears that an attendant at Elgin State Hospital, while in the course of his duties, attempted to separate two insane patients who were fighting violently, and fell to the floor sustaining injuries to his left ankle,

which resulted in a 30% loss of the use of the left foot, an award therefor *may* be made under the Workmen's Compensation Act, upon compliance with the requirements thereof.

DAMRON, J.

This is a claim for benefits under the Workmen's Compensation Act.

On the 27th day of May 1945, the above named claimant, while employed by the respondent, at the Elgin State Hospital, undertook to separate two insane patients who were then engaged in a violent fight. The claimant fell to the floor and sustained an injury to his left ankle.

He was immediately placed under the care of one of the physicians on the staff of said hospital. **X-rays** were taken, a cast was applied and remained on the injured limb for approximately six weeks. Claimant was unable to attend to his duties until the 13th day of **August** 1945 and at that time, and for some time thereafter, he used a walking stick.

The testimony offered on behalf of claimant, discloses that he was examined on January **30,1946** by Dr. Albert C. Fields for the purpose of testifying for claimant. **He** found, objectively, that claimant had limitation of dorsal flexion of 10 degrees, limitation of plantar flexion of about 15 degrees of the left ankle. There was considerable thickening of the malleal line, more pronounced on the external. On comparative measurements, the left ankle measured 8¾ inches and the right ankle measured 8½ inches. Over the malleal line, that is the lower end of the tibia and fibula, the left ankle measured 10¾ inches and the right ankle measured 10½ inches. The x-ray films taken disclosed evidence of an oblique fracture about 1 inch from the distal end of the fibula of the left ankle. It also showed that there was some deformity present

which allowed the ankle to deviate,toward the lateral side. It was about 1/16th of an inch out of alignment at the sight of the fracture of the fibula. On the date last above mentioned, the claimant was still limping.

This physician testified that, based on his examination of the claimant rind of his studies of the x-ray films of the fractured ankle, the claimant had lost **30%** use of his left foot.

Upon consideration of all the evidence, it would appear to this Court that a reasonable conclusion would be that claimant had been permanently injured to the extent of **30%** loss of use of the left foot, and the Court so finds.

The Court further finds from the evidence, that the claimant, at the time of the injury, was 50 years of age and had no children under the age **of 16** years dependent upon him for support. That all necessary medical, surgical, and hospital services were provided by the respondent.

From the record, the Court finds that the annual wages of the claimant for more than one year prior to his injury, were **$1500.00;** his average weekly wage therefore amounted to the sum of **$28.84;** that under Section 8, Paragraph (e) and **(1),** his compensation rate would be **$16.94.** The Court further finds that this claimant was temporarily totally disabled from May 27 to August **14, 1945,** or a period of 78 days for which he is entitled to temporary compensation at the above rate, amounting to the sum of **$188.76.** The Court further finds that during this period, the respondent paid to claimant, the sum of **$352.14** as salary, an overpayment of **$163.38** for unproductive work which must be deducted from his award. The Court further finds that under the above section and paragraphs of the Workmen's Compensation Act, as amended, claimant has suffered a **30%**

loss of use of his left foot which entitled him to receive an award in the sum of $686.07 from which must be deducted the overpayment above mentioned, leaving a balance now due claimant of $522.69. Claimant also asks an award in the sum of $75.00 which he claims to have expended for medical care and attendance. No proof has been made of these items and inasmuch as the record discloses that respondent furnished all necessary medical and hospital services required for claimant, this item must be denied.

The record discloses that **A.** M. Rothbart, Court Reporting Service, has filed a bill amounting to the sum of **$38.25** for the taking and transcribing of the evidence. This charge is fair and reasonable and is hereby allowed to claimant for the use of A. **M.** Rothbart making a total of $560.94.

An award is therefore entered in favor of claimant, Joseph Wingel, in the sum-of Five Hundred Sixty Dollars and Ninety-Four Cents ($560.94), all of which has accrued and is payable forthwith.

(No. 3945—Claimant awarded $987.44.)

ARCHIE CHAPMAN THOMPSON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed *May 14, 1946.*

BARRY MUMFORD and **EVAN** L. SEARCY, for claimant.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*when award may* be *made under.* Where it appears that a State employee while engaged with a fellow worker in the cleaning of an asphalt mixer in the course' of his employment suffers injuries to his hand, an award therefor may be made for temporary total disability under the Workmen's Compensation Act. Also where it appears that said claimant suffered the loss of more

than one phalange of the second finger of his right hand, the same is considered as the loss of the entire finger, under paragraph (e), subparagraphs 3-7; and where it appears that claimant suffered the loss of the first phalange of the third finger of his right hand, the same is donsidered to be equal to the loss 'of one-half of such finger, under paragraph (e), subparagraph 6 of the Section 8, and awards may be made therefor under the said Workmen's Compensation Act.

DAMRON, J.

This is a claim for benefits under the Workmen's Compensation Act.

On October 9,1945, the claimant was one of a group of State employees, engaged in cleaning a mixer which had been used in mixing asphalt patching material. The mixer was about one-quarter mile east of Kinderhook on U. S. Route 34 in Pike County, and was partially filled with a solvent and was being operated in order to clean the residual asphalt from the mechanism. During this operation, claimant's glove was caught by the revolving paddle inside the drum, causing his right hand to be drawn into the machine, crushing his right middle and ring fingers between the paddles and mixer drum.

The Division of Highways, claimant's employer, was notified of the accident immediately after it occurred and ordered the claimant's removal to Levering Hospital at Hannibal, Missouri. He was placed under the care of Dr. F. E. Sultzman. The following day, Dr. Sultzman operated on the crushed fingers, amputating the middle finger at the knuckle joint and the ring finger at the distal phalanx.

On November 19, 1945, claimant returned to work for the respondent.

The report of the Division of Highways, filed in this case, shows that claimant, at the time of the accident, was 45 years of age, married, and had three children under the age of 16 years, dependent upon him for sup-

port. His annual wage for one year next preceding the injury was $1800.00 per year.

It further discloses that claimant, because of his injury, was unable to work from' October 10, 1945 to November 18,1945. However, he was paid full salary for the period of October 10 to **31** inclusive, in the amount of $106.45, and temporary total disability at $21.60 per week for the period of November **1** to 18 inclusive, amounting to $55.54.

The report further discloses that the respondent paid the following creditors in connection with the injury of claimant :

Dr. F. E. Sultzman	**$100.00**
Dr. F. H. Dechow	**8.00**
Levering Hospital, Hannibal, Missouri.	**42.00**
Total	**$150.00**

Upon consideration of this record, we make the following findings: that claimant and respondent were, on the 9th day of October 1945, operating under the Workmen's Compensation Act; that on the date last mentioned, claimant sustained accidental injuries which arose out of and in the course of his employment; that notice of said accident was given said respondent and claim for compensation on account thereof was made on respondent within the time required under Section 24 of the Act; that the earnings of the claimant for the year next preceding the injury were $1800.00, and that his average weekly wage was $34.61.

That claimant was unable to resume his employ, ment from the date of the injury to the 19th day of November 1945, being 5 weeks and 5 days, for which he was entitled to temporary total compensation at $21.60 per week or a total of $123.43; that the respondent paid to the claimant full salary from the period of October 10

to October 31 inclusive in the sum of $106.45. Following this date, the respondent paid temporary total compensation to claimant at $21.60 per week for the period of November 1 to 18 inclusive, amounting to the sum of $55.54 making a total paid to claimant of $161.99 or an overpayment for unprbductive work of $38.56, which must be deducted from any award made to claimant.

Under Section 8 of the Workmen's Compensation Act, claimant is entitled to the sum of $21.60 for a period of 35 weeks, as provided in Paragraph (e), Sub Paragraph 3-7, of the Act & amended, for the reason claimant suffered the loss of more than one phalange of the second finger of his right hand which under said Act is considered as the loss of the entire finger, amounting to the sum of $756.00. Claimant is also entitled to have and receive from the respondent, the sum of $21.60 for a period of 12½ weeks, as provided in Paragraph (e), Sub Paragraph 6 of Section 8 of said Act, as amended, for the reason claimant suffered loss of first phalange of the third finger of his right hand, which under said Act is considered to be equal to the loss of one-half of such finger, amounting to the sum of $270.00, making a total of $1026.00. From this amount, the sum of $38.56 must be deducted, leaving a balance of $987.44.

An award is therefore entered in favor of claimant, Archie Chapman Thompson, in the sum of Nine Hundred Eighty-Seven Dollars and Forty-Four Cents ($987.44) payable as follows: Five Hundred Forty ($540.00) Dollars is accrued and payable forthwith, and the remainder, amounting to Four Hundred Forty-Seven Dollars and Forty-Four Cents ($447.44) is payable in weekly installments of Twenty-one Dollars and Sixty Cents ($21.60) for twenty (20) weeks beginning May 13,1946 and a final payment of Fifteen Dollars and Forty-Four Cents ($15.44).

This award is subject to the approval of 'the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees.''

(No. 3950—Claimant awarded $4,700.00.)

MAE CRATER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 15, 1946.

CARL BEHRMAN, for claimant.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*guard at Stateville Prison within provisions* of—when *an award may be made under—to widow of deceased employee.* Where it appears that a guard at Stateville Prison, while in the course of his duties accidentally fell down an elevator shaft and sustained injuries which resulted in his death, an award. therefor may be made to his dependent widow, under Section 7 of the Workmen's Compensation Act, as amended, upon compliance with the requirements thereof.

DAMRON, J.

This claim was filed on February 16, 1946 for benefits under the Workmen's Compensation Act.

The record consists of the complaint, Report of the Department of Public Safety and supplemental Report, stipulation that the above 'reports of said Division shall constitute the evidence; photostatic copy of marriage certificate of said Everett Edward Crater and Mae Cluney, the above named claimant, widow, statement of claimant, and waiver of brief of respondent.

The complaint alleges that Everett Edward Crater was employed as a guard in the Department of Public Safety at Stateville Prison; that on the 14th day of May, 1945 at about 1:00 A. M. he opened the gates of an elevator in said prison and in doing so fell through space to the bottom of the elevator shaft sustaining injuries

from which he died on the same day. The complaint further shows that the above named claimant and the deceased had no children dependent upon him for support under the age of sixteen years on the date of his death. The supplemental Report filed herein discloses that the deceased received a gross salary of **$169.00** per month for a period of twelve months prior to May **14, 1945.**

From a consideration of the record we make the following findings :

That on the 14th day of May, **1945** said deceased received injuries in the course of his employment for the respondent, said injuries causing his death, and that respondent had actual knowledge of the accident and the death **of** Everett Edward Crater as provided in Section **24** of the Workmen's Compensation Act; that said decease$ left no children at the time of his death who were dependent upon him for support, but that the claimant, Mae Crater, was his wife at the time of the accident, and that nothing has been paid to the widow, claimant, since the accident.

An award is therefore entered in favor of claimant, Mae Crater, in the sum of **$4,700.00** as provided in Section **7a** of the Workmen's Compensation Act, as amended. The Court finds that there has now accrued and is payable forthwith the sum of Nine Hundred Sixteen Dollars and Seventy-Six Cents **($916.76),** representing fifty-two weeks at a compensation rate of Seventeen Dollars and Sixty-Three Cents **($17.63),** leaving a balance due on said award the sum of Three Thousand, Seven Hundred, Eighty-Three Dollars and Twenty-Four Cents **($3,783.24)** to be paid to claimant, Mae Crater at the rate of Seventeen Dollars and, Sixty-Three Cents, **($17.63)** per week

with one final payment of Ten Dollars and Forty-Two Cents ($10.42).

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

PETRILLI vs. ILLINOIS PUBLIC AID COMMISSION.

The Illinois Public Aid Commission having asked the Court of Claims for advice concerning the following claim made against it by an employee for compensation for accidental injuries, the court in compliance with said request furnished the following advisory opinion, based upon the facts submitted.

ILLINOIS PUBLIC AID COMMISSION

ADVISORY OPINION No. 4.

(Payment of $94.60 advised.)

JOSEPH PETRILLI, Claimant, *vs.* ILLINOIS PUBLIC AID COMMISSION, Respondent.

Opinion filed September 11, 1945.

FISHER, C. J.

A request for an advisory opinion has been submitted by the above respondent based upon the following statements of fact:

STATEMENTS OF FACT

Mr. Joseph Petrilli of Rural Route No. 1, Springfield, Illinois, claims to have sustained a deep laceration of the left wrist on the 10th day of April, 1945 while working for the Illinois Public Aid Commission in Sangamon County, Springfield, Illinois.

As a result of this laceration, the large artery in the left wrist was severed causing profuse bleeding.

At the time of this accident, Mr. Petrilli was employed by the Illinois Public Aid Commission in the Division of OfficeManagement as Janitor I. His duties consisted of messenger trips to the Civil Service Commission, Merit System Council and the various code departments and commissions, assisting in the folding of letters and processing of mail for the 102 downstate counties and delivering same to the post office several times during the course of the day, keeping necessary supplies on hand for the mailing unit, assisting storekeeper in unpacking supplies and putting stock on shelves, procuring storage boxes and binding Public Assistance vouchers for the Cook County Bureau of Public Welfare and the 102 downstate counties for permanent filing purposes, moving furniture, desk and other office equipment when necessary, keeping water bottles filled and mopping up spilled water from coolers in the three Springfield offices of the Commission which are located in Rooms 201 and 403 Armory Building and at 219 East Monroe Street, keeping excess dirt and rubbage swept up as required, replacing light bulbs, cleaning and keeping all fans oiled and moving same when necessary, moving file boxes for the filing unit from one office to another as required, removing excess waste paper when necessary and assisting in the wrapping of packages for the mail unit and stores department for transmission to the various offices throughout the State.

Responsibility for administration of the Public Aid program in Illinois is divided between the overseer of the poor, who administers general relief and care for the medically indigent, and the Illinois Public Aid Commission, who administers the Social Security program

through the County Departments of Public Assistance of the one hundred and one (101) downstate counties, and the Public Assistance Division of the Cook County Bureau of Public Welfare in Cook County. The County Departments operate in accordance with uniform policies and procedures as set up by the ,Commission.

The Illinois Public Aid Commission has created many divisions and departments through which assistance is administered, one of these being the Division of Office Management. The work of this division includes the receiving, storing, shipping, loading, unloading, packaging, unpackaging of all furniture and equipment used by the Commission throughout the State; and also the cutting of paper used by the Commission in its work.

Mr. Petrilli was appointed Janitor I on the 5th day of May, 1942. He works approximately one hundred and sixty-six **(166)** hours per month and for his services receives a salary of One Hundred Thirty Dollars ($130.00) per month.

On the 10th day of April, 1945 at about 10:00 a.m., Mr. Petrilli was replacing the empty water bottle in the water cooler with a full bottle. While doing so he slipped causing the bottle to break. Part of the broken glass cut his left wrist, severing one of the large arteries. (See copy of statement of Mr. Petrilli attached and identified as Exhibit I.)

Following the accident Mr. Petrilli was taken to St. John's Hospital, Springfield, Illinois, by his Superior, Mr. Garrett W. Keaster, where he remained for a period of six (6) days. (See copy of Mr. Keaster's Statement attached, identified as Exhibit V.) Many services were rendered to Mr. Petrilli while in St. John's Hospital including medicine, laboratory examination, anesthetic, intravenous and dressings.

While in the hospital and for sometime thereafter, Mr. Petrilli was attended by Dr. David H. McCarthy, 608% East Capitol Avenue, Springfield, Illinois. During this period of time Dr. McCarthy performed many services including blood transfusion, sutures, visits to the hospital and dressings.

It was necessary for Mr. Petrilli to spend Nine Dollars and Seventy-five Cents **($9.75)** for taxi fare between the doctor's office and the hospital and his home. (A copy of the statement of Mr. Petrilli's expenditures is attached and identified as Exhibit **11.)**

As a result of this accident it was necessary for Mr. Petrilli to be absent from his duties with the Illinois Public Aid Commission from April 10, **1945** until May 11, **1945,** a period of thirty **(30)** days.

Hospital and medical bills (See Exhibits III and IV attached) were as follows;

To: St. John's Hospital, Springfield, Illinois. **.$44.85**

Said sum includes:

Emergency Room Treatment	$ 6.00
Anesthetic	1.00
Laboratory: **Routine Lab. Examination**	5.00
Sugar	2.00
Urinalysis (2)	1.00
Pharmacy	.40
Intervenous	2.50
Dietetics	2.70
Medicinal Supplies	.50
Dressings	2.75
Hospitalization: 6 days @ $3.50	21.00
	$44.85

To: Dr. David H. McCarthy, Springfield, Illinois. $40.00

Said sum includes:

1945	
April 10—1st Aid—Hospital,	**$10.00**

April 11-12-13-14-15-16—Hospital	12.00
April 18-20-23-26-30—Office	10.00
May 2-5-10-18—Office	8.00

Claimant has requested that payment be made by the Illinois Public Aid Commission to him, Joseph Petrilli, the sum of $9.75 as reimbursement for taxi fee paid by him; to the St. John's Hospital, Springfield, Illinois the sum of **$44.85** for services rendered by them; to Dr. David H. McCarthy $40.00 for services rendered by him. The said bills have been examined by the Illinois Public Aid Commission and have been found to be reasonable.

Claimant contends that on the date of his accident he and respondent were operating under the provisions of the Workmen's Compensation Act of this State, and that on such date claimant sustained accidental injuries which arose out of and in the course of his employment by the Illinois Public Aid Commission, and that the Illinois Public Aid Commission had notice of this accident and notice was made to his employer within six months after the accident, in accordance with the provisions of the said Workmen's Compensaton Act.

Claimant does not ask temporary, total, or permanent total disability.

EXHIBIT I.

STATEMENT OF JOSEPH PETRILLI.

"My name is Joseph Petrilli. Am married and living with my wife and family at Rural Route 1, Box 251, Springfield, Illinois. Am fifty-three years of age. Am employed by the Illinois Public Aid Commission, 201 Armory Building, Springfield, Illinois, as a janitor and have been so employed since May 5, 1942.

On the 10th day of April, 1945, approximately 10:00 A. M., I was performing my duties in the office in Springfield, Illinois, Second Floor, Armory Building, when I noticed that one of the water coolers in the office was empty. I went to the place where we keep the water bottles to replace the empty ones and proceeded to carry it to the cooler. After taking off the empty bottle I proceeded to place the full bottle in its place. As I was doing so I stepped into some water that had

spilled on the floor, causing me to slip and lose control of the bottle. The bottle fell to the floor causing it to break.

Soon thereafter I noticed a large cut in my left wrist caused by a piece of broken glass from the bottle. A large amount of blood was flowing from my wrist.

Mr. Keaster and others in the office succeeded in stopping the flow of blood and I was taken to St. John's Hospital, Springfield, Illinois, by Mr. Keaster. I remained in the hospital for a period of six days.

While in the hospital and up to and including the 18th day of May, 1945, I was treated by Dr. David H. McCarthy, Springfield, Illinois. Dr. McCarthy released me on the 18th day of May and said that I had recovered from my injury. I was told by Dr. McCarthy that one of the large arteries in my left wrist was severed.

I returned to work on the 11th day of May. 1945.

I have read this statement and it is true and correct.

/s/ JOSEPH PETRILLI."

EXHIBIT 11.

"TAXI FABES TO AND FROM DOCTOR'S OFFICE:

April 16	From hospital to home	$ .65
April 18	To Doctor's office and return (round trip)	1.30
April 20	To Doctor's office and return (round trip)	1.30
April 26	To Doctor's office and return (round trip)	1.30
April 30	To Doctor's office and return (round trip)	1.30
May 2	To Doctor's office and return (round trip)	1.30
May 5	To Doctor's office and return (round trip)	1.30
May 10	To Doctor's office and return (round trip)	1.30
		$9.75

/s/ JOSEPH PETRILLI."

EXHIBIT 111.

ST. JOHN'S HOSPITAL
Springfield, Illinois
April 18, 1945.

"Illinois Public Aid Commission
Armory Bldg.
Springfield, Ill.

Re: Joseph Petrilli
R. R. #1
Springfield, Ill.

4/10/45 to 4/16/45

Emergency Room Treatment	$ 6.00
Anesthetic	1.00

Laboratory:	Routine Lab. Examination..	5.00
	Sugar	2.00
	Urinalysis (2)	1.00
Pharmacy		0.40
Intravenous		2.50
Dietetics		2.70
Medicinal Supplies		.50
Dressings		2.75
Hospitalization: 6 days @ $3.50.		21.00
Total		$44.85

ST. JOHN'S HOSPITAL, Credit Dept."

EXHIBIT IV.

"To DAVID H. MCCARTHY, M. D., Dr.
Office 608½ East Capitol Avenue
Springfield, Illinois.

Office Hours: 2 to 5 and 7 to 8 P. M.—Sundays, 11 to 12 A. M.

State of Illinois—Dept. of Public Welfare.

Div. Public Aid Commission—Springfield, Illinois.

For Professional Services Rendered JOSEPH PETRILLI:

1945	
April 10—First Aid—Hospital	$10.00
April 11-12-13-14-15-16—Hospital	12.00
April 18-20-23-26-30—Office	10.00
May 2-5-10-18—Office	8.00
	$40.00

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EXHIBIT V.

"STATEMENT OF GARRETT W. KEASTER.

My name is Garrett W. Keaster, and I reside at 246 Cobb Avenue, Decatur, Illinois. I am 43 years old, and employed by the Illinois Public Aid Commission, 201 Armory Building, Springfield, Illinois, as State Field Representative and have been so employed since November 15, 1941. As such I am Mr. Joe Petrilli's immediate supervisor.

On the morning of April 10, 1945, at approximately 10:00 A. M. I noticed a commotion in the outer office and I left my desk to investigate what was causing the excitement. I noticed several people in and around Mr. Joseph Petrilli, and upon investigation I found that he had severed an artery in his left arm when in the process of placing

a full water bottle on top of one of our electric water coolers. With Mr. Petrilli were Harry Mann and Herschel White, two employees of the Commission, who were holding a tourniquet around Mr. Petrilli's arm, and also with their hands assisting in the stopping of the flow of blood from Mr. Petrilli's wrist.

After discovering that Mr. Petrilli had a serious cut I told them my car was in front of the building and that we should immediately rush Mr. Petrilli to St. John's Hospital, Springfield, Illinois.

The hospital was called and they were ready to receive Mr. Petrilli upon our arrival, and immediate attention was given to the stopping of the flow of blood from his wrist. After seeing that Mr. Petrilli was receiving all the medical attention that was required I returned to my duties in the Armory Building.

I made several visits to the hospital to see Mr. Petrilli and to inquire regarding the progress he was making and to his health in general.

I have read this statement and it is true and correct to the best of my knowledge.

GARRETT W. KEASTER.

Witnessed by JUANITA DRENDEL."

From the above statements of fact it appears that on the date of the injury, claimant and respondent were operating under the provisions of the Workmen's Compensation Act of this State; that on said date claimant sustained accidental injuries which arose out of and in the course of his employment; that notice of the accident was given to respondent, and claim for compensation on account thereof was made within the time required by law.

Section 8, sub-section (a) of the Workmen's Compensation Act provides:

"The employer shall provide the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter; limited, however, to that which is reasonably required to cure or relieve from the effects of the injury * * *."

The record shows that the following bills were incurred and are unpaid:

St. John's Hospital, Springfield, Illinois.	$44.85
Dr. David H. McCarthy, Springfield, Illinois..	40.00

The record further shows that claimant expended the sum of $9.75 for transportation charges from his home to the hospital and the doctor's office.

The record further discloses that said charges are reasonable.

From the' statements of fact herein, we find that claimant is entitled to payment of said items under the provisions of the Workmen's 'Compensation Act, and that the Illinois Public Aid Commission is properly justified in paying said claims in the sum of Ninety-Four Dollars and Sixty Cents ($94.60). Payment of this claim in the sum of Ninety-four Dollars and Sixty Cents ($94.60) is recommended, same to be made by the Illinois Public Aid Commission out of any funds held **by** it for such purposes.

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